My best information now as to what are the representative lumber points in Louisiana, Mississippi and in the south is that in Louisiana they are Baldwin, Berwick, Franklin, Jeanerette, Morgan City, New Iberia, Patterson, Lake Charles, St. James, Alexandria, Plaquemine, Whitecastle, Monroe, Baton Rouge, Leesville, Kentwood, Pickering, Bogalusa, Garyville, Ruddock, Coalfox, Winnfield and Barnes Creek. In Mississippi, Lumberton, Hattiesburg, Laurel, Meridian, Brookhaven, Osyka, Sardis and Bond. In Texas, Beaumont, Nona, Nacodoches, Orange, Rockland, Livingstone, M. Cannard Mills, Dayton. In Arkansas, Baker, Buchanan, Stamps and Cornie.

I have a statement showing the interchange of cars with the Oregon Short Line at Huntington, Oregon, for the year 1906.

From the Oregon Short Line during that year the O. R. & N. received 30,898 loads, 8,704 empties, making the total number of cars received 39,602. We delivered to the Short Line 37,081 loads and 493 empties. In this statement we have shown the distinction between coal cars, flat cars, stock cars, refrigerator cars and box cars, and the number of cars delivered and received, and the number of cars interchanged, received from the Short Line during that period.

Statement offered in evidence and is as follows:

Following is statement of cars interchanged with the O. S. L. at Huntington for year 1906:

	Loads.	Empties.	Total.
Coal Cars	5,681	619	6,300
Flat Cars	1,083	2,412	3,495
Stock Cars	3,904	1,541	5,445
Refrigerator	970	482	1,452
Box	19,260	3,650	22,910
Total	30,898	8,704	39,602
Delivered O. S. L.	37,081	493	37,574

I have a statement showing the equipment of open cars, distinguishing between flat cars and coal cars, received at Huntington, and also a statement showing the shipment of commercial lumber from Oregon points for the year 1906 to various points and places, from various roads. The figures show that there were delivered to the Oregon Short Line 17,709 cars of lumber for the year 1906. Of those cars 1,018 orig-

inated on the Northern Pacific and Great Northern Railroads. The difference, or 16,691 loads, represents lumber that originated on the O. R. & N., Southern Pacific and Astoria & Columbia River roads. The reason that I have separated the tonnage originating on the Northern Pacific and Great Northern is because we do not return any empty cars to those lines. The lumber we get is the result very largely of cars being empties on their lines. There was delivered to the Short Line 37,081 loads of all kinds of freight. There was received from the Oregon Short Line 30,898 loads. The difference of 6,183 cars represents the number of cars which it was necessary to haul empty from Huntington in order to take care of the preponderance in the eastbound tonnage.

Those cars include 1,541 stock cars and 482 refrigerator cars, and in deducting the stock cars and refrigerator cars from the entire number hauled empty, will leave 4,160 box cars and open equipment available for east bound shipments of lumber.

The number is 4,160 cars, or substantially 25 per cent. of the total number of cars of lumber that originated on the lines of the O. R. & N. Company, the Southern Pacific, and the A. & C. railroads. In other words, for every four cars of lumber shipped from points on the O. R. & N., Southern Pacific and A. & C. railroads, to points east of Huntington, it was necessary to haul one empty car west from Huntington. That is all open cars and coal cars. The statement correctly states the facts as to the number of open cars received at Huntington which were handled west empty, and the correct percentage of box cars received at Huntington and handled west empty.

Of the open equipment we received under load, 6,764 cars; and, empties, 3,031. Of the total equipment received at Huntington, 37 per cent. was empty or hauled west empty from Huntington. Of these roads received at Huntington, 5,681 were coal cars, and 1,083 were flat cars. We delivered no empty coal cars to the Short Line at Huntington; we received 619. We received 2,412 empty flat cars. Of the box cars received at Huntington, 3,650 were empty. That is about 15 per cent. of the total box car movement.

I have a statement showing the amount of commercial lumber in the year 1906 on the O. R. & N., Southern Pacific, A. & C. River Railroad, and the Oregon Water Power, and from the Southern Pacific and Astoria and Columbia River points, by the Southern Pacific, and the various states to which such stuff moved.

Statement referred to introduced in evidence is as follows:

"11. Of the equipment received at Huntington, the following consisted of open cars:

	Loads	Empties	Total
Coal cars	5681	619	6300
Flat cars	1083	2412	3495
Total,	6764	3031	9795

Representing an empty car movement of 30%.

"Approximately 50% of the lumber is loaded on open cars. 30% of the open cars received at Huntington were handled west empty.

16% of the box cars received at Huntington were handled west empty.

22% of all cars received at Huntington were handled west empty.

"12. Following is statement showing movement of commercial lumber from Oregon points for year 1906:

	From O. R. & N. Points.	From S. P. A. & C. and O. W. P. via Portland and O. R. & N.
Oregon and Washington	1,765	135
Idaho	2,001	250
Utah	2,712	2,528
Colorado	908	1,106
Montana	33	7
Wyoming	555	535
California and Nevada	34	30
Nebraska	525	401
Kansas	297	110
East of Missouri River	1,099	2,692
Total	9,929	7,794

	From S. P. and A. & C. R. Points via S. P.	Total.
Oregon and Washington	†1,200	3,100 cars.
Idaho	....	2,251 cars.
Utah	....	5,240 cars.
Colorado	....	2,014 cars.
Montana	....	40 cars.
Wyoming	....	1,090 cars.
California and Nevada	7,100	7,164 cars.
Nebraska	....	926 cars.
Kansas	....	407 cars.
East of Missouri River	....	3,791 cars.
Total	8,300	26,023 cars.

†Approximate.

"Of the total number of cars shipped, or 26,023, only 8,268, or 32%, were destined to points affected by the advanced rates of Nov. 1st.

"NOTE.—Only 468 cars lumber were shipped from mills on the O. R. & N. in Washington."

That shows that there were shipped to points in Oregon on the O. R. & N. lines, 9,929 car loads of commercial lumber, and from the Southern Pacific, Astoria and Columbia River, via Portland, and the Oregon Water Power, in connection with the O. R. & N. Company, 7,794 cars. The movement from the Southern Pacific and points in connection with the Southern Pacific, south through Ashland, 8,300 cars; that made a total lumber movement of 26,023 cars, from all points in the State of Washington. That is by rail, either involved in this case or south, that is by rail. That is commercial lumber.

We have shown the various states to which the lumber went. The statement correctly states the figures taken from the actual billing. I have undertaken to inform myself as to the amount of lumber cut in Oregon in 1906.

According to the information I have been able to obtain, it was about two billion feet. In Washington it was approximately four billion feet. Of the amount cut in Oregon in 1906, approximately 1,100,000,000 feet went out by water. And my estimate of the number of cars shipped from Oregon by rail is about 26,000 cars; from Washington about 76,000 cars for the year 1906. The total lumber cut of the Portland mills in 1906 is estimated at 643,000,000 feet. 240,000,000 feet of that went out by water. 150,000,000 feet was sold locally. 65,000,000 feet were shipped to California and Nevada; and Oregon, Washington, Idaho and Utah got 129,000,000 feet. The total shipped by water, sold locally, shipped to California and Nevada, and points in those states, not affected by any change in rates was 584,000,000 feet. That leaves the difference between the total cut and the amount that went to those states, 69,000,000 feet, or about ten per cent. of the total cut.

I have aimed to work up these figures pretty carefully and have taken them from our records, so far as we had records, and then to ascertain the facts by diligent inquiry among millmen, as to their water shipments and rail shipments, and from the trade papers.

I have prepared a statement showing the comparison of rates on lumber and other Pacific Coast products, from Portland to Denver, Omaha, Kansas City and Chicago, both in rates and in rates per ton per mile. That statement is correct.

Statement introduced in evidence and is, as follows:

"13. Following is comparison of the rates on lumber and other Pacific Coast products from Portland:

From Portland to COMMODITY.	DENVER.		OMAHA.	
	Rate in Cents per 100 Lbs.	Rate per Ton per Mile.	Rate in Cents per 100 Lbs.	Rate per Ton per Mile.
Lumber	.50	.0072	.55	.0061
Canned Goods	.75	.0108	.75	.0083
Dried Fruit	1.00	.0144	1.00	.0111
Wool			1.00	.0111
Hops	1.50	.0216	1.50	.0167
Hides, Green	.75	.0108	.75	.0083
Distance	1,390		1,799	

From Portland to COMMODITY.	KANSAS CITY.		CHICAGO.	
	Rate in Cents per 100 Lbs.	Rate per Ton per Mile.	Rate in Cents per 100 Lbs.	Rate per Ton per Mile.
Lumber	.55	.0054	.60	.0052
Canned Goods	.75	.0074	.75	.0066
Dried Fruit	1.00	.0099	1.00	.0087
Wool	1.00	.0099	1.00	.0087
Hops	1.50	.0148	1.50	.0131
Hides, Green	.75	.0074	.75	.0066
Distance	2,030		2,229	

Canned goods under the classification includes salmon and all closes of canned goods.

The word "distance" in the statement gives the correct distances on our line to Denver, Omaha, and Chicago, in connection with the Union Pacific.

Cross-Examination.

I have been with the O. R. & N. Railway Company 20 years and have been reasonably familiar with its business; I have charge of the traffic rates and know the reason why I make them.

From Portland, which is a water port, ten per cent. of the

lumber shipped from there went to this affected territory; approximately ten per cent. of the cut of 1906.

I do not wish the Commission to understand from that, that that is a fair statement of the lumber that goes from Oregon to the affected territory. From mills in the State of Oregon we estimate that approximately 32 per cent. is destined to the territory affected by the advance of rates of November first, and that includes this ten per cent. from Portland. The 32 per cent., you understand, is the percentage of the total movement by rail that was destined to the territory affected by the advanced rate. I have not undertaken to estimate the percentage of the entire cut of all the mills.

In connection with this empty car movement west bound, after making deductions for stock and refrigerator cars, it left for east bound lumber shipments during the course of the year, forty-one hundred sixty cars, for loading at points on the lines of the O. R. & N., the Southern Pacific and the A. & C. roads, for lumber shipments. Those cars come into Huntington empty all through the year. At this season of the year we probably would haul them empty from Huntington into eastern Washington, a distance of substantially from three to four hundred miles. We could haul them into Umatilla just as well, to some extent. We load them with wheat and bring them to Portland. I would not exactly say that these cars that came into Huntington moved empty into Portland for lumber, but I do say that the empty haul on those cars, even loaded with grain for Portland, is as great for Huntington as though they had been moved empty into Portland.

Mr. Teal: Do you haul ore from the Coeur d'Alene mines?

Mr. Miller: Yes.

Mr. Teal: What sort of cars?

Mr. Miller: Box cars.

Mr. Teal: And no other cars?

Mr. Miller: Generally speaking, no.

Mr. Teal: Are any of these cars used for that purpose that come back empty?

Mr. Miller: Some are hauled empty, I think, for ore loading.

Mr. Teal: Do you haul any ore from Baker City?

Mr. Miller: Very little.

Mr. Teal: Then, this statement is not correct, when you say "leaves for eastbound lumber shipments, 4160 cars"?

Mr. Miller: That is practically correct.

Mr. Teal: Correct with the qualifications and explanations you have given?

Mr. Miller: Yes, sir.

Mr. Teal: Do you know as a matter of fact what your percentage of empty car movement was in 1907?

Mr. Miller: I do not.

Mr. Teal: You were the General Traffic Manager, were you not?

Mr. Miller: Freight Agent.

Mr. Teal: Do you know what your empty car movement was 1906?

Mr. Miller: Taking the line as a whole, it was about what is given there.

Mr. Teal: Do you know what it was in 1900?

Mr. Miller: No.

Mr. Teal: Do you know what it was as compared with the Union Pacific?

Mr. Miller: No.

Mr. Teal: Do you know what it was as compared with the Northern Pacific?

Mr. Miller: No.

Mr. Teal: Would you say that your empty car movement was more or less in 1907 than in 1906?

Mr. Miller: No, I do not know what it was.

Mr. Teal: Suppose I told you that the reports show that your empty car movement was but 18.76 per cent. in 1907; would you say that was a pretty fair showing?

Mr. Miller: I would say, according to my idea about what the entire empty movement is, taking the entire line as a whole.

Mr. Teal: Do you know whether your road, the O. R. & N., handles a larger percentage of forest products than the Shore Line does?

Mr. Miller: Well, I do not know whether it does or not.

Mr. Teal: Do you know whether your road handles a larger percentage of forest products than the Union Pacific Railroad?

Mr. Miller: You mean a larger percentage as compared with the total tonnage?

Mr. Teal: Yes.

Mr. Miller: I should think the O. R. & N. handle a very much larger percentage than the Union Pacific or the Oregon Short Line.

Mr. Teal: Then if the empty car movement is due to the handling of lumber it would necessarily be reflected in the empty car haul, would it not?

Mr. Miller: Yes, I think so.

Mr. Teal: Do you know what the empty car haul was for the Union Pacific for 1907?

Mr. Miller: No.

Mr. Teal: Do you know what it was for the Short Line?

Mr. Miller: No.

Mr. Teal: Then, if it turns out that it is very considerably more than this, what would you say then?

Mr. Miller: I can only speak of course for the lines which I represent, the lines west of Huntington.

Mr. Teal: The percentage of the empty haul on the Union Pacific in 1906 was 25.20. Yours for 1906 was 20.50. Now do you think that this lumber movement on your road has troubled you any?

Mr. Miller: I do think the lumber movement has troubled us.

We have about 1200 miles of rail line. In 1897 it was substantially the same. The capital stock of the company is $24,000,000 of common, $11,000,000 of preferred, and our outstanding bonds are $22,000,000. Our mileage has increased some, perhaps one hundred miles, since 1897. I think the freight earnings on the O. R. & N. have increased from $2,500,000 in 1897 to about $8,900,000. Our haul of tons to the train has increased very largely in the same period. Our rates are not based on the earnings of the road. The amount invested in the road does not enter into them. The cost of the road does not enter into them. The increase in traffic may enter into them. Generally speaking, I should say that it is true the fact that we carry heavier trains, more tonnage, locomotives are capable of handling more freight, the cost of operation is reduced, does not enter into rate making at all.

The earnings of the O. R. & N. for the last ten years have constantly increased. Its gross earnings constantly increased, but its net earnings have not. Taking last year as the basis, the year ending June 30, 1907, our gross earnings increased about a million dollars, while our net earnings decreased one hundred thousand dollars. There was no particular reason that I know of for that, except the operating expenses were higher than they were the year before. The operating expenses were about one million dollars more than they were the year before.

The average rate per ton per mile on all lumber handled between all points on our line, in Oregon, Washington and Idaho, 7.23 mills per ton per mile. In arriving at that figure we take into account our transportation of this through lumber to Huntington. Through lumber as well as local lumber. All lumber handled.

The products of mines figured on the per ton and the ton

mile basis takes a lower rate than lumber does. That is ore, coal and stone, and miscellaneous freight of that character, when averaged together, makes a lower rate per ton per mile on the whole than the figures given for lumber, lower than 7.23 mills. On ore and concentrates I should say the average rate per ton mile in 1906 was approximately 6.5 mills. I don't know what we were earning on coal.

I assume that the statement is correct, that it was 4.3 mills. The ore and concentrates represent about 20 per cent. of our entire tonnage, but we handled a very large volume of crude ore from the mines to the smelters in the Coeur d'Alene district, for short distances. The ore is hauled from the mines in the Coeur d'Alene district, to Wallace and to the concentrators there. We haul some concentrates to Colorado.

In the last ten years the O. R. & N. Road has been very materially improved. The freight traffic during the last two years on the O. R. & N. has been congested at times. The amount of business that was being done was substantially all that could be handled satisfactorily to the traffic department. This congestion caused considerable difficulty in handling business. Our company does not charge for company freight.

Re-direct Examination.

The ore and concentrates are silver and lead ore, and are moved from the mines to the concentrator, where it is reduced, and then shipped to the eastern smelters. We get the handling of the concentrates, and they pay what we think is a low rate.

The Oregon Short Line handles a large volume of coal, and the Union Pacific carries a considerable quantity of coal. There is nothing that could move back locally in the Short Line territory in coal cars in any considerable quantity, except mining timbers. Probably some of those might be moved. They are used in mines for lumber. We load lumber in coal cars; any rough lumber, large timbers, ties. To some extent we load those empty coal cars. Coal cars that become empty in the west are loaded altogether with lumber for the east. We do not send back any empty coal cars at all.

I do not know of any movement of traffic on the Short Line which would load empty coal cars. The Navigation Company has no coal on its lines and, therefore, the coal which we handle is simply for local distribution in those states and carried at a very low rate. It comes in competition with wood,

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and also in competition with the coal that is produced in western Washington and British Columbia. Shore hauls from the Northern Pacific and the Spokane & International and Canadian Pacific lines. The coal that we handle comes very largely from Rock Springs, Wyoming, and Diamondville, and Kemmerer.

The Potlatch Lumber Company, *et al.*
vs.
The Northern Pacific Railway Company, *et al.*
} No. 1348.

ABSTRACT OF EVIDENCE.

Complainants' Exhibit 1 (P.-7) offered, being Northern Pacific Railway Company local and joint tariff, in connection with Butte, Anaconda and Pacific Railway, naming rates on lumber, shingles, and other articles enumerated from points in Oregon, Washington and Idaho, to stations in Washington, Idaho and Montana on the Northern Pacific Railway and the Butte, Anaconda & Pacific Railway.

Depositions offered in evidence (P-8) taken at Spokane, Washington, together with the exhibits.

Mr. Stephens, counsel for complainants, read into the record (pp. 10 and 11) statement furnished by the Forestry Department, showing the sales of lumber by the Fidelity Lumber Company, Spokane, Washington, on March 18, 1907, in the Priest River country, as follows:

"Dead and live white pine—$4 per M.
Dead and white western larch, $2 per M.
Dead and live red fir, $3 per M.
Dead and live red cedar, $2 per M.
Dead and green timber.
Red cedar—1½ cents per linear foot.
Poles, 12 inches and less, at small ends."

Mr. Stephens also offered a memorandum showing sales to the Chicago, Milwaukee & St. Paul Railroad Company under the rules of the National Forests:

"Lolo National Forest—$5 per thousand feet B. M. (I take it that is board measure) for all timber on right of way.

Coeur d'Alene—$4 per thousand feet B. M., for all timber on right of way and in sale to railroad on Clear Creek—$4—

$5—$6—per thousand feet B. M. for timber cut by contract from National Forest Lands outside of right of way.

Helena—$3 per thousand B. M., and $1 per cord for cord wood for timber from right of way."

Mr. Stephens also offered from the same source a list of prices which are being obtained by the Forest service for timber on a number of sales now in progress on the Coeur d'Alene, Priest River and Lolo National Forests:

BUNKER HILL & SULLIVAN MIN. & CONCEN. CO.—TIMBER SALE.

March 22, 1907.		Coeur d'Alene.
Live and dead	White Pine	$4 per M.
Live and dead	Douglas Fir	3 per M.
Live and dead	Hemlock	2 per M.
Live and dead	Tamarack	2 per M.
Live and dead	Red Cedar	2 per M.
Live and dead	White Fir	1.50 per M.

FEDERAL MINING & SMELTING CO.—TIMBER SALE.

July 27, 1907.		Coeur d'Alene.
Live	White Fir	$4 per M.
Live	Douglas Fir	3 per M.
Live	Red Cedar	3 per M.
Live	Hemlock	2 per M.
Live	Tamarack	2 per M.
Live	White Fir	1.50 per M.
Dead	All species	2 per M.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY CO.—TIMBER SALE.

August 8, 1907.		Coeur d'Alene.
Live and dead	White Pine	$4 per M.
Live and dead	Douglas Fir	4 per M.

J. T. KNAPP.—TIMBER SALE.

September 16, 1907.		Lolo.
Live and dead	Douglas Fir	$3 per M.
Live and dead	Tamarack	3 per M.
Live and dead	Lodgepole Pine	3 per M.
Live and dead	Red Cedar	3 per M.
Live and dead	Balsam	3 per M.

MANN LUMBER CO.—TIMBER SALE.

April 22, 1907.		Lolo.
Live and dead	Douglas Fir	$3 per M.
Live and dead	Larch	3 per M.
Live and dead	Lodgepole Pine	3 per M.
Live and dead	Balsam	3 per M.
Live and dead	White Fir	3 per M.
Live and dead	Spruce	3 per M.
Live and dead	Red Cedar	3 per M.
Live and dead	White Pine	3 per M.

FIDELITY LUMBER CO.—TIMBER SALE.

March 18, 1907.		Priest River.
Live and dead	White Pine	$4 per M.
Live and dead	Douglas Fir	3 per M.
Live and dead	Tamarack	2 per M.
Live and dead	Red Cedar	2 per M.
Live and dead	Red Cedar Pole	

Timbers 12 inches and less at the small end, 0.01½ per lineal ft.

On the Coeur d'Alene National Forest the prices have been advanced to a flat rate of $4 per M for mixed species. When the species are selected the price may be even higher.

The prices in the Chicago, Milwaukee and St. Paul Railway Company's Timber Sale on the Coeur d'Alene National Forest have not as yet been approved, but they will, no doubt, remain as they are stated above.

Very truly yours,

WM. F. COX,
Assistant Forester."

Mr. Stephens next offered in evidence a copy of the records of the State of Idaho, relating to a sale of timber land in April, 1907, showing the stock for sale. This was marked Complainants' Exhibit No. 2.

Complainants' Exhibit No. 3 (P-27), offered in evidence, consisting of a statement of the rating of engines on the Northern Pacific Railroad:

"2-25-8.

Tacoma to Summit.
Cascade Mtns—1350 tons.
Easton to Pasco, train limit 60 loads—2400 tons.
Pasco to Spokane—1700 tons.
Spokane to Missoula—1600 tons.
Missoula to Helena—1700 tons.
Helena to Logan—2200 tons.

Logan to Livingston—1500 tons.
Livingston to Glendive—train limit.
Glendive to Mandan—1250 tons.
Mandan to Jamestown—1500 tons.
Jamestown to Fargo—1700 tons.
Fargo to Staples—2500 tons.
Staples to St. Paul—2200 tons.

Complainants then offered in evidence (P-29), Watrus Exhibits Nos. 1 to 13, being Great Northern time-tables, and offered in connection with depositions of the witness Watrus taken at St. Paul, showing rating of engines on Great Northern.

Complainants also offered in evidence (P-29) three single sheets marked Complainants' Exhibits 3 to 6, inclusive, the purpose being to show, in connection with the depositions, how the empty cars are kept, and other matters relating to the movement of empty and loaded cars testified to by the witness Watrus.

Complainants' Exhibit No. 7 (P-37) offered in evidence, being a statement showing coal rates, old and new.

Rates	OLD		NEW	
	Double	Single	Double	Single
Denver, Colo	.45	.40	.55	.50
Colorado Springs, Colo	.45	.40	.55	.50
Pueblo, Colo	.45	.40	.55	.50
Salt Lake City, Utah	.40	.40	.50	.45
Ogden, Utah	.40	.40	.50	.45
Milford, Utah	.48½	.47½	.62½	.57½
Provo, Utah	.40	.40	.52½	.47½
Minnesota Transfer, Minn	.45	.45	.55	.50
Omaha, Neb	.55	.50	.60	.55
Kansas City, Mo	.55	.50	.60	.55
East St. Louis, Ill	.57½	.52½	.65	.60
Crawford, Neb	.45	.40	.55	.50
Austin, Texas	.70	.70	.82½	.77½
Galveston, Texas	.70	.70	.82½	.77½

Complainants' Exhibit No. 8 (P-39), offered in evidence, as follows:

COMPLAINANTS' EXHIBIT NO. 8.

Great Northern Railway Company
Freight Traffic Department.
St. Paul, Minn. Feb. 25, 08.

Mr. J. B. Kerr,
c/o Northern Pacific Ry. Legal Dept.,
St. Paul, Minn.

Dear Sir:

Please refer to File S—

Referring to Mr. Stevens' inquiry as to old and present rates on lumber applying from O. R. & N. points to points on the Great Northern via Spokane.

The following gives the old and new rates:

Prior to November 1st, 1907.

Supplement No. 2 SR 662, effective January 10th, 1906, page 21 names rates from Harrison and Wallace, Ida. and intermediate points to Minneapolis, Minnesota Transfer, St. Paul, Duluth and Superior as follows:

45 cents on poles, double car lengths
50 cents on pine lumber, double car lengths, and
40 cents on single car lengths of pine lumber only.

OR&N tariff 1906, OR&N ICC 1101, GN GFO 17310, effective October 17th, 1906, names 40 cent rate on fir lumber, poles, piling and timbers, single car lengths from points between Portland and the Dalles, Ore., to St. Paul, Minneapolis, Minnesota Transfer, Duluth and Superior.

Same tariff also names rate on pine lumber, poles, piling and timbers, single car lengths from the Dalles and points between the Dalles and Spokane to same Eastern Terminals, 40 cents.

Effective November 1st, 1907.

Under SR 936, effective November 1st, 1907, 50 cent fir lumber rate applies from Coast points on the OR&N to St. Paul, Minneapolis, Minnesota Transfer, Superior and Duluth only.

Same application and tariff names current Spokane rates to group B C & D to practically all points in Minnesota, including the terminals.

Divisions.

Divisions of the rates above mentioned both prior to November 1st, 1907, and at present is on a mileage pro-rate, with minimum of 25 per cent. to the short line with the following deductions before pro-rating:

On shipments from Portland, Albina and St. John when consigned to Great Northern Eastern Terminals 10 cents is deducted as terminal charges, divided equally before pro-rating between the O R & N and Great Northern Rys.

On shipments from Portland, Albina and St. John to stations in Minnesota other than Eastern Terminals the western terminal charge of 5 cents only is deducted before pro-rating, which accrues to the O R & N Co.

On shipments from interior points on the O R & N to Great Northern Eastern Terminals, eastern terminal charge of 5 cents is deducted before pro-rating, which accrues to the Great Northern Ry.

I trust this will give you the information desired.

Yours truly,

Complainants Exhibit 8½ (P145) offered in evidence, consisting of statement furnished by the Northern Pacific, with reference to various forest products shipped from points on the Northern Pacific to the summit of the Cascade Mountains and Lothrop and Arlee, Montana, for the calendar years 1905, 1906 and 1907.

Complainants' Exhibit No. 9 (P-51) offered in evidence, as follows:

"Great Northern Railway Company.
Accounting Department
St. Paul, Minn., February 18th, 1908.

J. G. Drew,
Comptroller
G. R. Martin,
Assistant Comptroller.
Mr. James B. Kerr,
City.
Dear Sir:—

Replying to your letter of even date to Mr. R. I. Farrington, Second Vice President, requesting certain information in connection with the freight traffic of the Great Northern Railway Company to be used in connection with the Potlatch

Lumber Company case. I beg to advise as follows, covering the fiscal year ended June 30th, 1907.

	Tons	Ton Miles	Revenue
Eastbound	13,351,738	3,322,924,004	$20,971,124.93
Westbound	4,874,268	1,601,666,276	16,351,599.36
Total	18,226,006	4,924,590,280	37,322,724.29
Interstate	14,164,344	4,426,476,985	$30,600,677.39

	Ave. Revenue Per ton mile. Cents.
Eastbound	.631
Westbound	1.021
Total	.758
Interstate	.691

Yours truly,

J. G. DREW,
Comptroller."

Complainant's Exhibit 10 (P-53) offered in evidence, as follows:

"Northern Pacific Railway Company.

Statement showing tons one mile, revenue and rate per ton per mile on all interstate freight carried—fiscal years ending June 30, 1906 & 1907.

	Ton miles	Revenue	Rate per ton per mile
1906.			
East	2,972,848,557	$17,828,091.63	0.5997
West	1,359,950,617	13,997,314.58	1.0292
Total	4,332,799,174	$31,825,406.21	0.7345
1907			
East	2,732,433,790	$17,026,059.77	0.6231
West	1,775,736,746	17,900,001.66	1.0080
Total	4,508,170,536	$34,926,061.43	0.7747

Complainants' Exhibit No. 11 (P-54) offered in evidence, being statement of empty car movement by months.

JOHN J. HERLIHY, a witness for the complainants (p. 55), testified:

I live in Spokane, Washington, at the present time. In one way and another I have been in the lumber business for about twelve years. During two and a half years I have worked in fir timber saw mills, manufacturing fir lumber. For three and a half years I was in the employ of the Kalispell Lumber Company, at Kalispell, Montana. For three years I was in the employ of the Potlatch Lumber Company, as manager of the mill, and for a year and a half I was engaged in the wholesale lumber business at Spokane. I am now engaged as a special salesman for the Potlatch Lumber Company. For the past two months I have been traveling over the territory which, in common parlance, is termed "Territory east of Chicago"; in other words, through part of Illinois, northern Indiana and northern Ohio; the Southern Peninsula of Michigan, New York State and Pennsylvania. I was trying to sell lumber for the Potlatch Lumber Company. My sales during that time in that territory were very small, in fact, so small they are hardly worth mentioning. The products sold were white pine of the higher class, used for special manufacturing, where other woods could not be used at that time; in quantity, about 125,000 feet altogether, about six carloads.

I am fairly familiar with all of the market conditions of common stock in the places where I have been. During January I was in Chicago up to about the 9th of the month, and during that time the sales of Southern pine had been made on a basis ranging from $14 to $16 per thousand feet, delivered at Chicago. It was Southern pine, which is termed dimension stuff; that is, 2 x 4's to 2 x 8's, and some 2 x 10's, and Southern pine inch boards, up to ten inches in width. At the other places where I have been, the prices range about the same in proportion to the additional freight. At Toledo, Ohio, sales were made on the basis of $15 to $15.50 per thousand for the same lumber. At Detroit, Michigan, sales were made at $15.50 to $16. Taking the manufactured lumber in the Spokane territory and taking the freight out of that price, the railroad would get all the amount of the invoice.

The general character of timber in the State of Washington upon the summit of the Cascade Mountains to the west is classified as Douglas fir, spruce and cedar, which is of large growth and a higher quality than the timber in what is known as the

Spokane District. It is a considerably higher quality and larger growth than the timber on the east summit of the Cascade Mountains. We are not able to manufacture the same products, because the size of the timber, in the first place, precludes us. Then we have a very thick sap, and that is a fault, on general inspection by the railroad themselves. Our timber has not got the strength that the Coast timber has, the fir especially. We cannot manufacture large construction timber, like you can from the Coast lumber. I have seen large construction timbers from the Coast, in the last few months, at Chicago, Toledo, Cleveland, Detroit, Buffalo, New York City and various other points. That timber would range in size from 12 x 12 up to 32 feet; 12 x 14 and 14 x 16 up to 24 feet; joists 2 x 14 and 2 x 16, 24 and 26 feet long. Also a good deal of car sills, in other words stock 5 x 9 x 41 feet, and some 7 x 11 and 41 feet. Generally speaking, there is none of that dimension stuff manufactured in the Spokane Territory. There has been a little manufactured on special orders, to be used locally within the district. As I previously stated, the stock shipped out of the State was shipped to points where this other timber is used, would not pass inspection as laid down by the bureaus passing on it. There is very little timber from the foot of the Cascade Mountains to the Columbia River, and from the south part of the State off to the north part of the state. If we use the Great Northern as a base, north of the Great Northern Railway there is timber, and east of the Columbia River. Through the rest of the State of Washington, there is practically none to speak of. There is a considerable territory north of the Great Northern, in the bend of the Columbia, where there is no timber, and in referring to that I would say that it is a small territory, practically east of the Columbia River. The agricultural part of Washington then is between the foot of the Cascade Mountains and the eastern part of the State of Washington, and largely south of what is known as the Big Bend in the Columbia River. The wooded country of Washington is in the southern part of the State, including the counties of Whitman, Garfield, Walla Walla, south to the Oregon State line. The timber where it begins in the northeast part of Washington, and to Idaho and into Montana is practically the same all through that section. There is no difference as to quality, and practically the variety of the timbers is distributed on about the same proportions. I have visited eastern Oregon at various times. In the eastern Oregon district they have a greater percentage of pine than we have, but not so much mixed

timber. In our section, I should say that we have eight varieties of timber that we manufacture. In the eastern Oregon district three would about cover it, with yellow pine in large quantities, say probably eighty to eighty-five per cent. of the standing timber. By yellow pine I mean what is classed as western soft pine in Oregon. In Idaho and northeastern Washington the same class of timber to about 70 per cent., about ten per cent. of white pine, 20 per cent. larch, and the other 20 per cent. is mixed timbers, in small proportions, hemlock, spruce, cedar, white fir and all the other low-grade timbers. In fact the output of the log, as we would say, is practically all common grade lumber, suitable for what is termed small piece stuff, two inches thick by four inches wide and wider, we being able occasionally to saw on special orders, for retail yards, pieces up to six by six and six by eight. Our standard lengths run from 12 to 20 feet. We do not attempt to make anything over 20 feet long. There is a small proportion of 18 to 20 feet stuff, but 12 and 16 are the standard lengths.

Our select and better would compare with the Coast first and second clears. Probably we would be on an average a little lower than Coast second clear. Practically all the flooring used in the Spokane district comes from the Sound. A small percentage of the interior finish for houses and business blocks and other places comes from the coast. It is termed long and deep joists, practically comes from the coast, all heavy construction timbers. I have prepared a map showing certain data, a blue print, which is hanging there (indicating). This map was gotten up to show the different districts, in the first place, to which the new rate under I. C. C. 850 applies. Take the Northern Pacific Railroad as a starter, and what is listed as the Spokane rate includes all the territory along the Spokane and Lewiston branch of the Northern Pacific down to and including Kamish, Idaho, one hundred and fifty-eight miles south of Spokane, and from Spokane to Culdesac, Idaho, 147 miles from Spokane.

The rate extends east over the Northern Pacific to and including Evard, 240 miles east of Spokane. On the Northern Pacific and on the Great Northern the rates extend east from Spokane to Ferrykatka, 120 miles east of Spokane. The Spokane Falls Northern, which is now a part of the Great Northern, has an arbitrary on the Spokane rate ranging from one cent to two and a half cents to the hundred pounds. The output of lumber in this part of the country, along the Spokane and Lewiston Branch only, is about 125,000,000 feet. Out of

that 60 per cent. is manufactured within a zone 70 miles south of Spokane. The output of lumber east of Spokane on the Northern Pacific, is about 330,000,000 feet per annum. The output along the Great Northern, from Spokane east to Ferrykatka is 170,000,000 feet. Using Spokane as a basis for distance, it would really make a greater average haul.

Previous to the new rate going into effect, this territory in North Dakota was divided on a graduated scale. Between Beech, North Dakota, and Fargo, North Dakota, the rate ranged from 33 cents, and gradually increasing along to Mandan to 36 cents and along to Fargo where it reached 40 cents. Under the new tariff these same rates have been advanced to 40 cents, including the territory from Beach to Mandan and from Bismarck to Jamestown 42 cents, and east of Jamestown, to and including Minneapolis, St. Paul and Duluth, 45 cents. I am taking the rate from Spokane, I have been using Spokane as the basis. To answer your question, the rate is not 40 cents from Sand Point to Beach; but the proportionate increase is just the same. I cannot recall now what it is without referring to the tariffs; but the proportionate increase in just the same.

Using the term "our timber" I mean to apply it generally to the materials in the Inland Empire, taking the product of the country all through that section. The lumber is of such a grade as that we can not compete in the territory east of the Missouri River, and practically south of the lines of the Chicago, Burlington & Quincy Railroad in Nebraska, including also Wyoming, Colorado and Utah. The main competition is with the southern yellow pine in eastern Texas and western Louisiana. At the present time the mills of the Inland Empire are not able to compete with the product of the south.

On that map I have indicated the old and new rates to points in South Dakota. The distance from Spokane to Linton, North Dakota, is 1130 miles. The old rate was 40 cents and the new rate is 45 cents. By the Northern Pacific to Minneapolis the distance is 1501 miles from Spokane. The old rate was 40 cents and the new rate is 45 cents, so that at Linton you get 45 cents for 1130 miles as against 1501 miles at the same rate. By the Great Northern to Minneapolis the distance is 1485 miles; by the Spokane International, Canadian Pacific and Soo lines, the distance is 1468 miles. The same rate applies on that road. At Linton the Northern Pacific connects with the Chicago, Milwaukee & St. Paul. It is the junction. Zeeland, North Dakota, which is the next point I have mentioned, is 1115 miles from Spokane. The old rate under the previous tariff

was 41½ cents—that is, previous to the tariff going into effect November 1st. That was 1½ cents higher than Linton. The new rate is 51½ cents, or 7½ cents more. Where, before, there was a difference of 1½ cents, there is now a difference of 7½ cents. Going along the line of the Milwaukee from Linton I take Eureka, South Dakota. From Spokane it is distant 1170 miles. The old rate to Eureka was 45 cents, and the new rate is 55 cents. That is 10 cents difference; in other words, for 1170 miles the rate is 10 cents more than it is to Minneapolis, for 1501 miles. There is more than 300 miles difference in distance, and the rate is 10 cents greater. The rates are over different roads. The character of the country from Linton to the east is practically the same grade all along the Northern Pacific, through North Dakota. It is a prairie country. There are no heavy grades. Roscoe, North Dakota, is 1205 miles, and the Spokane rate is 48¾ cents under the old tariff and 58¾ cents under the new tariff. That is illustrative, I believe, of a number of the points all through, under the same conditions that are indicated by figures here on the map, and also the distances. I have figured out the distances from the official guide book. They are reasonably accurate. The difference in distance via Linton and via Edgeley is about 70 miles in favor of Linton. Down to and including practically Yankton, South Dakota, the distance is less than it is to Minneapolis, from Spokane, with a rate varying from 5 to 12 cents higher. The same will apply to points on the Chicago Northwestern, connecting with the Northern Pacific at Oaks, North Dakota. The distances there vary from 300 miles down to practically equal distances, and the rate from Spokane to Minneapolis being from 5 to 12 cents a hundred higher.

The distance from Spokane to Omaha is 1510 miles, and to Minneapolis, via the Northern Pacific is 1501 miles. The rate to Omaha under the new tariff is 50 cents. The Great Northern publishes a rate via Sioux City for a distance from Kalispell to Omaha of 1596 miles, of 43 cents. That is the new tariff. It would be over the C., B. & Q. and the Great Northern. I think the road is operated by the C., B. & Q., but I am not positive of that fact now. It comes from Sioux City by way of Western Nebraska and Omaha. Under the new tariff there is a differential applying to Ellensberg of 2½ cents a hundred pounds, also applying on Great Northern points, east of the Cascades and west of Spokane. The difference in differential between the Coast and what is known as the Spokane rate is 5 cents a hundred. That applies to points east of the Cascade

Mountains and to one or two small points on the Great Northern. From LaGrande to Omaha on the Union Pacific is 1494 miles, with rate of 43 cents. That is a 7-cent difference between that and the Spokane rate of 50 cents, which is charged for 1510 miles, a distance of 16 miles more; 7 cents greater rate from the Spokane territory compared with the rate from LaGrande. The distance between Portland and LaGrande is 305 miles.

The principal table shows the distances from points on the Kansas City Southern in Louisiana and Texas to Omaha, Sioux City, Minneapolis, and points on the Atchison, Topeka & Santa Fe, and points in eastern Texas and western Louisiana, to and including Omaha, Sioux City and Minneapolis. The distance from Beaumont to Omaha is 981 miles, and the rate charged by the Kansas City Southern and the Atchison, Topeka & Santa Fe is 23 cents to Omaha. This shows that, for the same distance, Spokane has a rate of 40 cents. From Lake Charles, Louisiana to Omaha the distance is 947 miles, with a rate of 23 cents. From Spokane, about the same distance, the rate is 40 cents. From Bon Ami to Omaha is 897 miles, and that has a 23 cent rate, while Spokane pays 40 cents. That applies on down the line until we come to Shreveport, which is 765 miles from Omaha, and has a rate of 23 cents, while Spokane pays 37 cents. Alexandria, Louisiana, is 1040 miles from Omaha, and pays a rate of 23 cents, while Spokane pays 40 cents. Texarkana is 695 miles from Omaha, with rate of 23 cents, while Spokane, being about the same distance, pays 36 cents. From Beaumont to Sioux City is 1072 miles, with a rate of 28 cents, while Spokane pays from 42 to 45 cents for the same distance.

As against 28 cents to Sioux City. Lake Charles, Louisiana, is 1048 miles from Sioux City, and pays a rate of 28 cents as compared with a charge of 40—45 cents for the same distance from Spokane. We will take the shortest distance, Texarkana to Sioux City, a distance of 728 miles, with a rate of 28 cents, while Spokane pays 37 cents.

The same is true of the distances at Minneapolis, and the same ratio holds. We will take one or two points for illustration. Texarkana, by the Kansas City Southern is 1071 miles from Minneapolis, with a rate of 32 cents, while for the same distance from Spokane the rate is 42—45—50 cents. The 42 cent rate applied by the Great Northern, the Northern Pacific, or the Spokane International, the Canadian Pacific and the Soo Line. The 45 cent rate applies for that distance to points reached over the Great Northern to Billings, and then

over the C., B. & Q. The 50 cent rate applies to points in South Dakota, via the Northern Pacific to Linton, and then over the Chicago, Milwaukee & St. Paul. Most of the Southern pine lumber that is sold in competition with the product of the Spokane District in Nebraska and South Dakota, up to and including Minneapolis and as far south as Duluth, originates at points on the Kansas City Southern, and the Atchison, Topeka & Santa Fe.

I have taken also the distances by the Santa Fe, and they range from 1166 miles from Silsbee to Omaha, to 1237 miles from DeRider to Omaha, with a rate of 23 cents. This shows that for the same distance Spokane pays from 42 to 55 cents from Sillsbee to Omaha. The lower rate of 42 cents is along the Great Northern and Northern Pacific to points in North Dakota. The next lowest rate of 45 cents is west of Jamestown, along the main line of the Great Northern, and Northern Pacific to points in North Dakota.

The 50 cent rate is to points on the Burlington, and the 55 cent rate to points on the Chicago, Milwaukee & St. Paul and the Northwestern.

The timber in Louisiana and New Mexico is the same as our western soft pine. It is the same kind of timber. From Flagstaff, Arizona, by the Atchison, Topeka & Santa Fe, is 1740 miles, and it pays a rate of 40 cents; from Williams, Louisiana, by the Atchison, Topeka and Santa Fe, the distance is 1374 miles and pays a rate of 32 cents. The amount of lumber manufactured in Arizona and New Mexico is about 2,000,000 feet annually. The Spokane rate for that same distance would be 55 cents for 1753 miles as against 40 cents for 1740 miles—55 cents as against 40 cents, and 32 cents as against 45 cents. I have prepared tables here showing comparisons from various southern points. The tables herein show the distances and rates to points in Nebraska, from points on the Atchison, Topeka & Santa Fe, and points on the Kansas City Southern, and points on the Missouri Pacific line, giving the distances, and the long haul and short haul. It also shows the rate of freight, the distances from Spokane, and its rate of freight. I would say that in the Spokane case I have taken the lowest minimum that will be allowed, according to the cubical load capacity of the tariffs. Of course, in exceptional cases, that weight would be under that. These distances were taken from the official guides issued by the railroads. In speaking of the greater amount of lumber shipped from the Spokane district as being shipped within a radius of 70 miles from Spokane, I have taken

that from the actual capacity of the shipments from the mills, in that distance. This minimum carload from Spokane is practically taken from thhe tariff, and taking the basis of a 34-foot car, loaded to full visible load capacity, it would give about that minimum. I got that information practically from the tariffs, from the cubic foot contents.

If they lead to the capacity of the car, the net weight then governs. If they load under it, they have to pay for the minimum, unless they have a specific provision in regard to that on the bill of lading, they have got to pay for the full minimum. They have that privilege specifically mentioned in their tariffs, with the exception that when a car is loaded to its full visible load capacity they specify on the bill of lading that the net weight will govern, otherwise that they have got to pay the full minimum capacity, as provided by the rules of the railroad. I got this minimum for southern pine shipments from the testimony of Mr. Keith, in December, before the Commission in the Pacific Coast and Oregon Lumbermen's case. He appeared as a witness for the railroad companies. I do not know anything about 54,000 pounds being the average load of southern pine. That 34,000 minimum gives these people an advantage on large lumber shipments inland. If a man wants 15,000 feet of lumber it will weigh 34,000 pounds, and the southern pine mills can ship it. If a man wants 15,000 feet of lumber from the Spokane District, you cannot sell it; but you have got to sell enough to make the minimum, as provided by the railroad rules. I would say that I have not had experience enough to say whether 34,000 pounds is about the average of southern pine shipments of lumber.

Complainants' Exhibit No. 12, offered in evidence (p. 83), being statement of comparative distances and rates from points in Southern Pine Belt and from Spokane to points in Nebraska as shown herein, comprising pages 84 to 102, inclusive, copied into the record.

The greater portion of the southern pine shipments originate south of Shreveport. The main operations include the mills along here (indicating), at DeRider, Bon Ami, Alexandria, Lockport, Lake Charles, Pickering and Fisher. I would say those embrace all the principal points in Louisiana. I did say that I had no experience in southern pine shipments, but we have the records of the Association there, and have the records of the mills in that district. The owners of the mills know the capacity of the mills. I have prepared the tables to show, on the first page, the distances from the originating point to Alli-

ance, Nebraska, by the Atchison, Topeka & Santa Fe Railroad, the Kansas City Southern and Missouri Pacific, from points at which the mills are located, which are actually selling in that district. I have averaged those distances and shown the rate for the average distance, also the Spokane rate and the distances. I have done that as to other points, to Broken Bow, Nebraska; Seneca, Nebraska; Grand Island, Omaha, Sioux City, Iowa, and Minneapolis. The last page shows the distances from the mills, on the Kansas City Southern Railway, and the movement by the Kansas City Southern to Kansas City, and thence to Chicago by the Santa Fe, which is the shortest distance, showing distances ranging from 1092 miles, to 1219 miles, with a rate of 26 cents. The rate from Spokane, for the same distance by the Northern Pacific, is from 40 to 45 cents, by the Great Northern the same, and by the Chicago, Burlington & Quincy from 45 to 47 cents.

I would say that the rate on the products of Spokane, and the district taking the Spokane rate, from Chicago to Toledo was 9 cents, and the rate on Southern pine from Chicago to Toledo is 4 cents. In other words, the rate from the Southern pine mills to Toledo is 30 cents, and from Spokane, under the new tariff, it would be 34 cents, and under the old tariff it was 59 cents. The distance is the same, being 240 miles from Chicago to Toledo. The rate from Chicago to Toledo is to be covered by supplement No. 2-D, Transcontinental freight tariff, as published in December.

The rate on southern pine into Toledo is shown by the Atchison, Topeka & Santa Fe Tariff via Chicago. It is not based on the rate by way of Cincinnati. I took that from the lumbermen's tariff book.

Of the product which we sell in the market from the territory around Spokane, the percentage of common grades is, practically speaking, 92 or 93 per cent.; 7 per cent. of clears; what we call selects, or better. Our C. select and better compare with first and second clears of southern pine or coast fir. Other 93 per cent. is all common grade. By common grade we mean knotted and defective boards, that will not be classed or passed in the grade of clear and better; in other words, boards with a knotty appearance, and running from that down to boards full of pitch and knot holes, and such other defects as are in our common classes. None of it can be used for finishing.

The southern pine is being sold in Nebraska territory at $16. That is, I would say, in the Nebraska territory, and the terri-

tory in the vicinity of Grand Island, Nebraska. At Omaha, at about $14.50, and at Minneapolis at $16. Under the new tariff the value would range from $5 to $6.50 at the mill per thousand feet. At present prices lumber could not be manufactured in the Spokane district other than at a loss, not within the price of $7 per thousand feet, with the present competition. There is a considerable amount of stock on hand in that territory. In the Spokane district at the present time there are about 570,000,000 feet of lumber at the mills.

That seven per cent. which I testified as being the best grade, of course, if it was to come to the point of segregation of all timbers would not apply. It would be a hard thing to get one per cent. of selects. With our red fir we would get probably one per cent. at the outside, and with our white fir nothing; it would practically all be common, and hemlock would be the same thing. In our heaviest percentage of fifty per cent. of yellow pine, it would run about seven per cent. select. Our yellow pine and the yellow pine of Texas and Louisiana is not of the same nature at all. Our yellow pine is classified by the Forestry Bureau as comparing probably with the Norway pine of the north, rather than with the southern pine of the south. We have the pitch defects, which the southern pine has, and we have heavier saps than the southern pine, that is outside of the timber in the State of Missouri. Missouri pine probably has sap that would compare with ours. The knots in our lumber are not as sound as the southern pine knots. I would say that sixty per cent. of our yellow pine, if left for the space of nine months to a year—the knots would begin to drop out. There are more black knots. They are not the red, sound knots.

(P. 112.) The Forestry circular number 122, referred to as being exhibit already in evidence in the Coast cases, and considered an exhibit in this case.

Cross-Examination.

I am with the Potlatch Lumber Company. There are quite a number of owners of that company. I am not an officer of it. Have been with it at the present time about four months. Neither Mr. Humbrid or Mr. Weyerhaeuser are interested in it. The mill is located at Potlatch, Idaho, 79 miles from Spokane, eleven miles east of Palouse City.

I can not tell how many feet that mill cut in 1907 and 1908. I have no idea, I have not been around the mill enough to know.

I know from the sales where seventy per cent. of the total cut in that district goes. I did not say that 70 per cent. of the lumber cut in the Spokane district was out south of Spokane. I said it was cut within a radius of 70 miles of Spokane. I got these figures from the secretary of the Oregon & Western Shippers' Association. R. A. Kellogg is the secretary. I don't know much about the cut in 1906 and 1907.

I said that at first I was with them for three years, then for a year and a half I was in the wholesale business at Spokane. I have been with them since December 1, 1906. They cut about 70,000,000 feet that year. Of that 6 per cent. was white pine, about 40 per cent. western pine; the rest was mixed, fir, larch, white pine, spruce, cedar, hemlock and such stuff, a general mixture.

The first trip I made east at the present time as salesman for this company was in December. I went to New York and Pennsylvania. I did not sell all of the six cars in New York and Pennsylvania, I sold part of it in Illinois and part of it in Ohio. The last previous trip through that same territory I did not make in the interests of the Potlatch Company. I never made any other trip in the interest of that company east of Chicago.

We have undertaken to sell a similar product in that same territory by mail, but not otherwise. I have traveled through that territory in November and December, 1906, to sell the same kind of product. I sold then about 24 or 26 cars, but of an altogether different nature of stock. There was one big lump sale to one party.

In testifying that I only sold six cars, I do not mean to say that there was no market there at the present time under the new rates in all cases, but the general fact of the matter was that, in particular instances, we were not able to compete in price with other sections of the country. I don't think you can say that the market has gone to pieces when people are buying, and sales being made all the time.

There has been a fall in the sale price of southern pine in this territory which I covered, in the last six months, of about five to seven dollars. Inland Empire pine, taking the territory handling the same grade of stuff, has been sold, in particular instances, at seven dollars less, and even worse in some cases. The freight was such that it would not pay to have sold more than six cars. I could have sold more if I had wanted to give the railroads the freight.

I understand the Potlatch Lumber Company is an intervenor before Judge Hanford.

I have no instructions regarding the basis on which I was to sell, whether under the old rate or the new rate. I made the price on our product.

This territory back here (New York and Pennsylvania) is not affected by the tariff going into effect November 1st. We have a through rate from here, and the tariff is 70 cents, governed by supplemental tariff 12-2d. That rate went into effect some time in December, as I remember.

I stopped off on the way to New York and Pennsylvania to try to sell around Chicago. I could not sell a carload in Chicago, although I tried. I made a delivered price. I tried to sell my lumber in competition with the Minneapolis market in the same territory that Minneapolis sells, irrespective of what the freight rate would be from our district. I tried to sell our lumber at the prices made by the Minneapolis dealers in the Chicago market. I undertook in Chicago to sell our product on the basis of the prices made by Minneapolis dealers in Inland Empire pine, irrespective of what the freight rate would have been, and I was not able to sell any. Minneapolis has one rate into Chicago. I will correct myself as far as the Minneapolis dealer is concerned, and say the price of the lumber manufactured in Minneapolis and adjacent to Minneapolis. In Chicago I was competing with both the Inland Empire pine and with Minneapolis pine, from Minnesota and Wisconsin. I don't know whether a great many of the western lumber men have been selling pine on the basis of the old rate since the injunction. I don't know what basis they are using for their prices at all. I don't know of any official price lists of the Association.

It is true and not true that the reason I could not sell any in Chicago, Pennsylvania and New York was because of the general market conditions. The fact is that the southern pine mills, with the advantage of rate they had in that territory, were able to sell and did make sales, and numbers of sales. The fact that Minneapolis was shipping lumber would lead anyone to suppose that there was a market for stock, and they cut my price. I could have sold lumber if I could have come anywhere near the price, but if we had done it, we would naturally have had to pay the railroad from a dollar to two dollars more than the invoice price, on account of freight in some cases.

This market is not affected by the rate; that is the territory east of Pittsburg and Buffalo is not affected by the rate. The point of my testimony that I could only sell six carloads

in the territory east of Pittsburg on this trip, is from the very fact that it is because of the rates, in the first; and in the second place, southern pine has a low rate to a good many points near to it, and they can equalize their prices. The trouble is with us that we cannot equalize the prices.

The Potlatch Lumber Company cuts and ships western pine and white pine. We cut a whole lot of 2 by 4. We have got a big stock of it. I didn't say we cut seventy million feet last year, I say that is about the capacity of the plant. I won't say positively the exact quantities that the mill cut, because I have not seen the reports. I have not spent a week at the plant. When I was previously with them I knew the kind of stock they cut, and it is practically the same now. I was with them before this in 1903, 1904 and 1905. At that time the number of 2 by 4's they were cutting would vary, according to the logs they were cutting. There is no set amount that we would cut. We cannot figure and give it correct, or anywhere near correct, in percentages. I have no idea of what percentage of the total output of our mill for one year would be, of dimension stuff. The only way the percentages of other kinds cut could be verified and be given anywhere near accurately would be to go back to the books, invoices, sales books and such things as that. There is no set rule about cutting a percentage of different kinds of lumber.

The best market for the Potlatch Lumber Company, and where it sells most of its product in interstate traffic is points in North Dakota, South Dakota and Nebraska. We sold wsetern pine and a little white pine, and such products as that, in Nebraska. I cannot state how far east of Nebraska we went. We have very little in Omaha. You can practically say that the territory in which most of the product was sold would be west of Seneca, Nebraska, or Broken Bow, Nebraska. This was mixed stuff, part select and part common.

Under the conditions that existed in the year 1907, I would say that Mr. Kellogg's testimony at Spokane that in that year there was 107,000,000 feet of pine went into Nebraska, would be correct, and the reason for that was that, at that time the mills of the south were busily engaged in cutting railroad material and heavy construction material for railroad companies, and they were not making any effort to do any retail business in the Nebraska territory. About June, when the business of the railroads fell off, the mills of the south found that they had quite a stock on hand, and they then made an effort to sell, and did sell lots of stuff. At that time the

trade of the Spokane district fell off very materially, and I don't think that today the Spokane district is shipping more than one-third the amount of stuff they shipped into Nebraska in February of last year. 1906 and the early part of 1907 were abnormal years. I think Mr. Kellogg's testimony is about right, that in 1906, 111,000,000 feet went into Nebraska from this territory. Probably 80 per cent. of that was common lumber.

I would not say that the common lumber from the Coast has never been able to get into Nebraska. If I heard a well-informed lumber man from the Coast testify to that, I would think it would be true, as far as his case was concerned.

The conditions are what made our shipments into Nebraska in 1906 and 1907 possible. I said it was the abnormal demands by the railroad companies for car material, bridge material, and other big material, and that business went south. We didn't get any of that, except what might have been used for local purposes. The Coast was in the same condition. They were busy manufacturing stuff for the railroads, and it left the retail yard men in Nebraska and elsewhere out of stock. They had to send somewhere else to get their stuff, and consequently they came to us. Under normal conditions, we would not enjoy that trade. The Coast was in the same condition as the south. They were getting out railroad material. They don't all on the coast get out this big timber, but they get out car material and such stuff as that. They had a big trade besides in San Francisco, and they were able to get more money for their common product in San Francisco, owing to the demand there. I could not say what the average price paid for common boards was at our mills in 1906 and 1907. The market price on the line of the Northern Pacific f. o. b. at these points for common boards in 1906 and 1907 ranged from ten dollars up. In some cases it was lower and in some cases higher than it was on the coast. We probably got more for 12-inch boards than the Coast did, and we made more on them,—a whole lot more, that is we manufactured more in proportion to our cut. We got a larger amount per 1,000 for such boards in some cases in 1906 and 1907.

In those years I should say for a while that dimension stuff was worth a little more in Spokane territory than on the Coast. As a matter of fact our price on all dimension and common lumber was not uniformly higher than the coast now, during 1906 and 1907. The price list as published might be

higher; that is not a gauge of the market. We sell in competition with fir. I am familiar with their price list as published or printed. There was not such a great difference between Coast prices charged on fir and the Inland Empire price on western pine, for the same article. The abnormal part of those years was caused by demands of the railroads for material.

I did not say anything about the price of railroad material being the same. The price of common lumber and fir and western pine for 1906 and 1907 was practically the same. The reason anyone would want to buy our material in preference to the Coast material was simply because they could not get it from other districts. They make common lumber when they manufacture these big timbers, but the manufacturers were not able to ship it because they could not get the cars in 1907, not enough to supply the demand. When they got cars they used them for railroad material. We had trouble in getting cars because they were used for railroad material.

The normal market for our product is North and South Dakota, Nebraska and Colorado. I cannot answer now whether we sold more or less than usual in North Dakota, in 1906 and 1907. That was an abnormal year in North Dakota for a while. There was a good demand in the fore part of the year. More lumber was sold in the years 1906 and 1907 in North Dakota than in South Dakota. In South Dakota in those years I think the same rule would apply. I think the sales were about equal to what they have been in previous years. I think that our trade increased but a little bit up to June, practically. I presume that the same thing would apply to our trade throughout that country in North and South Dakota and Nebraska. All shipments from the Inland Empire began falling off in June. Very few orders came in, and at the same time shipments from the south increased into the same territory.

I never shipped any to California from the Inland Empire. Some box shooks have been shipped there. That is about all. If Mr. Kellogg said that in 1907 4,500,000 feet were shipped, that was abnormal at that time. That is an abnormal demand caused by the heavy fruit crop in California at the time and they had to come to us to get a few boxes. I think that I said over one-half of the lumber from Spokane and Lewiston branch was produced within seventy miles of Spokane. The Spokane and Lewiston branch is 178 miles and 146 miles. Be-

tween eight and nine hundred million feet of lumber was produced in 1907 in the territory referred to as affected by the Spokane rate. The report shows that over 40 per cent. of our lumber was consumed locally in the territory affected by the application for this differential. It would not be over 175 or 200 million feet. That would be a high estimate.

We produce very long timbers in our territory, only on special written orders. For heavy timber, as I stated, our timber is not of a nature to pass inspection under the railroad rules. Our western yellow pine is not as strong as southern yellow pine. The Government test shows that.

The route from LaGrange to Omaha, which takes 43 cents, is the O. R. & N. and Union Pacific. I made some computations from the map here, on rates from points in Texas, from Beaumont to Omaha. I did not select Beaumont alone. The Statement, as presented, will show these representative points, a short haul, long haul and intermediate haul, all the way through, and the average of them. Texarkana has a 23 cent rate to Omaha. It takes the same rate to Omaha that Beaumont does. I have heard that Texarkana, as a lumbering manufacturing point does not produce as great an output as is produced right in the vicinity of Beaumont.

A great deal of the lumber manufactured there is exported, but I don't think the reports will show that a majority of it is exported. That is an advantage to them we have not got. This territory between Pine Bluff and Texarkana is a lumber producing territory. That takes the same 23 cent rate to Omaha with Texarkana and Beaumont.

Cross-Examination. (Record, p. 137.)

Our lumber in the Spokane district is poorer in quality than the lumber produced on the Coast, very much poorer, as regards the ability of the mills to get out a product that would be able to compete in the market against other timbers. I should say very substantially poorer. Our common lumber is poorer than their common lumber. Our common boards on the average are poorer than their common boards. That is true of all the material I am connected with and the products I am selling.

I think the lumber from around Bonner, Montana, is a little better. It is a little bit better about Baker City and LaGrande, not to a very great extent. They do not have the mixture of timber that we have.

I am well satisfied that our lumber is very much poorer than that west of the Cascade Mountains.

People say that Mr. Frederick Weyerhaeuser owns much timber west of the Cascade Mountains. We read about him in the magazines being even richer than Rockefeller. He operates no mills in North Dakota. He does not operate our mills. I could not tell you how many mills he is interested in. I know of his owning an interest in other mills besides the Potlatch Lumber Company, but only from hearsay, only from rumor. I don't know it positively, outside of the Potlatch.

I have been working in connection with the Potlatch Lumber Company on and off between three and a half and four years. The Potlatch mill has operated a saw mill for six years; first a small mill. The present mill about two years. Within the last two years Mr. Frederick Weyerhaeuser has very considerably enlarged the Potlatch mill.

There are others of the Potlatch Lumber Company besides Mr. Frederick Weyerhaeuser, considerable outside of him. It is a corporation and there are a number of people in it. I cannot tell the different interests of the stockholders, but their interests are represented there. Mr. Weyehaeuser owns a very small amount compared with the capitalization of the company.

I don't know the Weyerhaeuser Syndicate. I did not say that we never sold our product prior to 1906 and 1907 in Dakota and Nebraska. Mr. Kerr asked me a question about our normal market. I said that 1906 and 1907 were abnormal years in the general lumber trade. We have always sold in Nebraska and South Dakota to a certain extent, but we did more in 1906 and 1907 than ordinary. Under normal conditions we cannot compete, even under the old rates, in North and South Dakota and extreme western Nebraska.

In going down into Pittsburg and New York, I was not trying to sell common lumber. I was trying to sell the lumber that is a very small percentage of our product which we cannot market in the territory west of the Missouri River. I was not down there trying to sell white pine. I was trying to sell in New York state anything of the higher order, that we have no market for at points west of the Missouri river.

We have a very small percentage, about one or one and a half per cent., at the outside, of high grade white pine that would be used for certain purposes, for instance, such as piano keys, draftsmen boards, and such things as that. We have no market for that west of the Missouri River, and we

have got to seek a market in the east. The same thing would apply to a portion of what we call here yellow western north pine, probably two and a half per cent. We have to seek a market for that east of the Missouri river, irrespective of what the freight rate might be. It has no sale west of Chicago. The people won't use it because they can get their stuff cheaper.

I did not sell any of this stuff down in New York City. I was talking about New York State. I sold some in Indiana, some in Ohio and some in Michigan. In Ohio I sold some common boards and some siding. I cannot give you the prices I got for them now. There was quite a number of cars filled with different items of stuff. I will give you the prices of those in the morning. We have sold a little of our product in that territory, but not enough to make a showing. It was not plain common boards in all cases that we sold there. There was some laths, some siding, and some sash and door cuttings.

Our common product comes into competition with yellow pine, the stuff that we sold in Ohio and Indiana comes in competition with yellow pine, shipped from Albuquerque, New Mexico, Williams and Flagstaff, Arizona. It is the same kind of wood and we come in competition with them at that market. That wood is the pine of Arizona and New Mexico and is the same as that we classify as western soft pine. It is classified by the Forestry Department as the same lumber. The mills of the Inland Empire classify that as western soft pine, but the New Mexico people classify it as white pine.

We cut about 40 per cent. western soft pine. We don't have to ship that into Ohio and Indiana in order to find a market for it. In one way we would have to ship it everywhere to get a market for it, and in another way we can't ship it. We formerly shipped to Chicago under the old freight rate and some of it into Ohio and Indiana under the old freight rate.

There has been no change in the freight rate to New York, but the output of lumber in Arizona and New Mexico is increasing every year and with the freight rate they have they are able to drive us further west and drive us out of the market as their output increases.

I don't state that the rates east of Chicago were not affected by this change, but in comparing the rate east of Pittsburg and the rate on our product with the rate on the New Mexico and Arizona timber, you see they enjoy a much better rate than we do, and their output is increasing every day, which makes quite a—

The rate between Chicago and Pittsburg is greater under the new tariff. West of Pittsburg and Rochester the rate has increased. They have this western soft pine around La Grande, a little bit better quality than ours. I would not say La Grande could stand a higher rate than we can. The lumber men out there have got all the rate they can stand now. I could not say right now the difference in value per thousand feet between their product and ours. Ours may be 50 cents, it may be a dollar, 70 cents or 80 cents better.

I don't know whether they make this piano key stuff there. La Grange ships to this eastern territory.

The output of the Bonner district is practically the same as that of the Spokane district. They have a differential in their freight over us of 7 cents to the Missouri river. That is the mill at Bonner, Montana. We have the same rate, 40 cents to Minneapolis. They have no less rate than 40 cents to Minnesota Transfer. I think I am right about that. There are other points to which they have a better rate, but you asked me about the Minnesota Transfer. Practically speaking, Bonner has a less differential under the new rate than it has under the old rate to Omaha, Kansas City and St. Louis. Baker City under the old rate had an advantage over us into a territory that we do not go into. Baker City and La Grande under the old tariff had a differential of five cents over us. That differential under the new tariff has been increased to Omaha. There is a greater differential now than there was before.

We compete with all qualities and grades of yellow pine lumber so far as our stock is concerned. We have to compete with southern pine in all its grades. Western soft pine for construction purposes is poorer than southern yellow pine. Southern pine is superior for building purposes.

The only parties we have been able to sell where we make the bulk of our sales in northern Nebraska and North and South Dakota, we meet the competition of yellow pine only. In normal times southern pine is our heaviest competitor. We have had to compete against Oregon fir. Practically speaking our timber is poorer than Oregon fir. There might be cases where the rule would not be applicable.

Under the old tariff Spokane City itself had the same rate into the Dakotas as they had from Puget Sound, but the surrounding territory did not. There was a graduated basis of rates on the Northern Pacific and the Great Northern, coming up to within a distance of eighteen miles east of Spokane. Lewiston paid the same rate as Spokane under the old tariff.

The amount of stuff shipped from Lewiston and that vicinity is very small, to eastern markets. The amount really shipped from Spokane east would probably be about eighteen to nineteen million feet, probably not that much. That lumber comes from east of Spokane, on the Northern Pacific and the Great Northern. Some comes over the Spokane Falls & Northern.

Our mill is south of Spokane. We pay the same rate at Spokane. There were times when we competed with Oregon fir in the Dakotas under the old rate. Under normal conditions we could not compete with anyone, practically speaking. I don't mean to say that under the old rate we could not sell any lumber. I will correct myself there and say that during a normal lumber business or season we had everybody as competitors. We paid the same freight rate that Oregon fir paid, and our quality of lumber was very much poorer than theirs. It is pretty hard to say how much under the Oregon fir price we had to cut in normal years in order to make our profit. We would quote a price in order to get the order, and perhaps we would not know how much we were under Oregon fir or anything else. We may make a man a quotation to-day in order to get his business, and make another man another quotation to-morrow to get his business. Of course, he is going to buy where he buys the cheapest.

I think our lumber is worth maybe about $1.50 less per thousand feet than Oregon fir. I am open to correction on that.

We come more in competition with lumber from the Puget Sound country than we do from the Columbia river country. That is called Douglas fir. Practically speaking we have not sold our lumber for many years in direct competition with Douglas fir. We had a five cent advantage in freight rates to Nebraska points, from the Pacific Coast territory.

I have had nothing to do with the sale of the Potlatch Lumber Company products until the last three months. I was in the lumber business at Spokane for a year and a half. Practically speaking during all that time I had to do with the selling of this particular kind of lumber that is produced about Spokane. I have had more to do with producing it than selling it. I have been engaged in producing it for about eight and one-half years.

The Inland Manufacturers, as a factor in the sale of lumber in the Dakotas, and Nebraska, have practically extended back over a period of not more than five years. For five years this Spokane western pine has been a factor in the Dakotas, to a certain extent. It did not sell while it was paying

exactly the same freight rates. Kalispell has a less rate than the coast, and Bonner had a less rate than the coast. Spokane City itself had the same rate as the Pacific Coast. It was not higher on the Spokane Falls & Northern. There is the same rate as Spokane up to and including Coleville, or Myers Falls.

I could assign a number of reasons why this stuff could sell in the Dakotas. I don't know how much we would have to cut the price in order to sell it. I may have had ideas about it. I was not the sales manager of any milling company or in the selling end of any milling company in those times. I was in the manufacturing department. This mill was located at Kalispell. The differential there over the coast ranged from seven cents down to equal, I think, at Devil's Lake, if I remember right.

We sold some of the lumber that we produced at Kalispell, in the Dakotas. We got to Minot with it, but we never got up to Devil's Lake. We did not get into Nebraska at all. We sold only in North and South Dakota. At that time there was no saw mill at Spokane. There were very few mills north of Spokane at that time. There were no mills west of Spokane; no mills south of Spokane at that time except small mills cutting lumber for local trade. These mills north and south of Spokane have sprung up during the last five years.

I was connected with the Kalispell Company up to April, 1903, from February, 1899. At that time there were no mills west of Spokane and east of the Cascade mountains. Very few north of Spokane, and they were small. They were not selling in competition with the Kalispell mill at all, but there were some shipments made. I cannot answer right now whether the Baker City mills were competing.

From 1903 to 1906 the Potlatch Lumber Company sold very little lumber in Nebraska, very little in the western Dakotas. They were not manufacturing to any very heavy extent at that time. So far as Nebraska was concerned, we could not compete with southern pine at all at that time. We could not compete in those days against Oregon fir in Nebraska, paying the same freight rate.

We had an advantage of five cents a hundred. In a part of Nebraska we did compete with a five cent a hundred advantage. The advantage is now five cents a hundred, that has not changed. We were able to compete to a certain extent on certain articles, but not on the general run of stuff. There was lots of stuff being manufactured that we could not

manufacture, heavy timber, and heavy joists, and deep joists and such stuff, which they manufacture which we do not.

We were not able to compete with them on that. Practically speaking the same condition exists to-day. I do not think it has changed at all. As far as the Omaha market itself is concerned, we cannot compete as against Baker City, but the mills in our district ship very little lumber to the City of Omaha. So far as competition in Nebraska is concerned otherwise, we cannot do it for the simple reason that they don't come into competition with us on that rate. If we want to shop to the territory that Baker City and the eastern Oregon mills ship to, we have got to ship by way of Silver Bow Junction, and pay a higher rate.

There is practically only one mill in business at Spokane. The competition of the mills north, south and west of Spokane and at Spokane, with Kalispell, would be in a great measure up to the mill man at Kalispell. If he wanted to take it on the difference in rate, he could do it and put his material in; he could do it and not give us a chance to compete. In good times he would probably take advantage of that, and in bad times he has got the advantages of us on that rate.

That same differential has not always existed against us. In North Dakota it has, for certain distances; but the mills have been able to meet it to common points, where the rate was equalized; but just now there is a difference all the way through.

I never shipped anything from Spokane in former days. Prior to this new tariff stuff moved from Spokane south, west and north of Spokane, in competition with Kalispell stuff and sold against it, for the simple reason that the output in the Kalispell valley was not great enough to take care of the trade that existed at that time. But at the present time those conditions are changed. That lumber sold against Kalispell goes now into North and South Dakota and western Nebraska. We have been able to sell some every year in Nebraska. There was no competition in Nebraska with Kalispell because Kalispell did not have the routing. Baker City did have. To a certain extent Baker City lumber is better than ours. It had a rate that we did not to western Nebraska over the Union Pacific. The Union Pacific does not reach all the points in western Nebraska.

We sold our lumber along the line of the Chicago, Burlington & Quincy in Nebraska. By "we," I mean the Inland Empire. Through Silver Bow Junction, when we could get

the cars, the main gateway was through Billings, over the C., B. & Q., west of Broken Bow. I should say take a line north and south through Broken Bow would give the territory that we supplied on the C., B. & Q. We did not go east of Broken Bow and compete on all grades of stuff. We tried to compete east of Broken Bow. We did come into competition with southern pine, under normal conditions, when they were in the market to get business. We had very little competition in 1903 and 1904, up to and including November, 1905; then again, for the last year, we have had hard competition in that territory with southern pine.

I do not sell in Nebraska on the Union Pacific, and I never have been in competition on the Union Pacific at any time. There are four competition points with the Union Pacific in Nebraska, Grand Island, Karney, Omaha and Lincoln. We could not sell stuff there against Baker City. If they had the stuff that people wanted, and we had it, Baker City would get the preference. Baker City always had a chance to sell cheaper in Nebraska. They always had a differential of five cents. They had the advantage in freight rates and to a certain extent better lumber and to a few points.

At all times, except on the Burlington, our sales have been very small in western Nebraska, except during those abnormal years. I won't say that on the Burlington they have been very small. I could not recite right now how much the entire district has ever sold in feet in western Nebraska in ordinary times per year.

We sold in 1906, I guess, about 104,000,000 feet, in 1907 something like 105,000,000. Both of those years were very abnormal; I could not say whether that stuff was all sold on the Burlington road. I would have to go to every mill in the country to verify that. During the time I was selling I was selling in Nebraska. We sold a little on the Burlington. We did not sell much in Nebraska while I was selling myself. I was not selling for the Potlatch mill, I was selling for myself as a broker.

I tried to work the Nebraska country by mail and sold a little lumber there, but not very much. In 1906 I probably sold four or five hundred thousand. Our total sales during 1906 and 1907, in the two years, were probably a million and a half feet of lumber, or something like that, just about 600,000 feet a year or thereabouts. For the years prior to 1906 there was not a market for the output of the Inland Empire. We had open competition in the latter part of 1903, 1904 and

1905. Conditions existed then as they exist now, practically. We had big stocks on hand, and we had competition to meet everywhere. We could not sell, as the others had the advantage of the freight rate. There has been no time when the Inland Empire could handle its lumber, except in 1906 and 1907. In 1906 and 1907 we were able to do a very good business. At that time there was a differential existing in favor of the Inland Empire against the Pacific Coast only to a certain territory in North Dakota—a five cent differential along the Burlington in Nebraska. In the Inland Empire the differential is still maintained. The average differential is not now greater in favor of the Inland Empire than it was formerly. It is maintained at about the same.

I would want to refer to the tariff books. The rate from Spokane to Broken Bow, is 50 cents. The distance is 1280 miles. The rate from the southern pine district is 40 cents. That is a blanket rate and applies to all the southern pine district. The distance from Beaumont to Broken Bow is 1210 miles. It is 1284 from Spokane, or 74 miles difference. The rate difference is 10 cents. 1210 miles is the average distance, I want to correct myself there.

I cannot tell whether the yellow pine people have made the contention that under the conditions and rates on Douglas fir and lumber raised in Washington and Oregon it has driven the yellow pine practically out of Nebraska. I think the records will show that those yellow pine people shipped more stuff into Nebraska than any mills in the west. Their reports will show that it is the other way from being driven out entirely.

Cross-Examination by Intervenor.

There is a range of mountains known as the Cascade mountains that come down to that section of Oregon and Washington (indicating) that divides the states into two geographical divisions, the eastern and western. On the western side you have fir, on the eastern side largely pine, that is east of the Columbia.

In this section of eastern Washington and eastern Oregon the forest is not identical. There is a great variety of kinds of timber in that section. The varieties in the Inland Empire are not exceeded by any other district east of the Cascades. The major part of that is pine. You could speak of pine in the east as you do of fir in the west.

This Spokane rate does not go back west, because there is a differential attached. I am sure of that. Under the former rate basis, we were on a five cent basis to Omaha below the coast rate. I think that is right. Outside of the differential along the Burlington, in Nebraska, and what some of the mills in the eastern Spokane district had in North Dakota, there was no differential. Out here in eastern Oregon there was a differential against the coast in our favor of five cents, and into Omaha of five cents. That is substantially the only differential that existed on the Union Pacific system prior to this change of November 1st, 1907.

North Yakima is in Washington, about 247 miles west of Spokane, I think. The Klickatat valley is just about south of North Yakima. There is a little difference between the character of the lumber they produce and that at the North Yakima mills on the east side of the Cascade mountains. The pine in the Klickatat valley is considerably better than the pine at North Yakima. North Yakima has a great quantity of fir in there.

The distance I have shown from Portland to Spokane of 541 miles. There is not a direct route over the Northern Pacific. There is a direct route from Portland to Spokane by the O. R. & N.

The distance from Spokane to Denver by the shortest route is 1333 miles. I don't know the shortest distance from Denver to Portland. I could not positively say whether the difference in the distance is 50 miles, it may be a little more than that. From points on the O. R. & N. east of the Cascade range of mountains, the distance may be a little shorter than from Spokane to Omaha. For instance, the Hood river district. So, as a matter of fact, the distance, so far as Denver is concerned, and that Colorado territory, and so far as the coast is concerned, even using Portland as the basis of distance, absolutely cuts no figure at all to amount to anything.

I said taking into consideration what we would grade or call common products, and what we would call the same when applied to coast material, I figure the difference in value of our common products under the common products of the coast at about $1.50 a thousand. All of this lumber is ordinarily sold at the mill; sold in that way at our mill, at the coast mill and at the Hood river mill.

I would have to say that the price for our ordinary common boards and a coast board of the same kind would not be much more than even for the same quality of board. Taking the

distance you speak of there, there might be an equality of price in dimension stuff like 2 by 4s and 2 by 6s, and 2 by 8s, of the same equality, taking the price at any of these mills and the price at our mill. Taking the 10 cent differential from Spokane territory into Denver and Omaha, or into any of these other territories, the Klickatat valley mill would not be much of a factor, because the output there is very small. There is none to speak of there, practically. They would be at a disadvantage in the market with 10 cents a hundred against them.

I found when I went south that there was a large district of the same character of timber in the yellow pine belt, that took a blanket rate. That was done so as to let them all into a common market with the same kind of timber.

I cannot state what the weight of a carload of our lumber is. I would not want to state that it is lighter or heavier, as shipped, than the coast lumber. I think our exhibits will prove that. The man who is buying has got no business to know the weight of the lumber. The mill pays the freight. If we were selling against coast lumber or any other lumber and our lumber weighed as much less as 10 or 20 per cent. than the other lumber weighed, it would be just that much advantage, but if it weighed more, we would have to pay it.

I don't mean to tell the Commission that I cannot tell the difference between the weight of our lumber, as shipped, and the weight of the coast lumber. If we take weight for weight, and the condition of the material when it is shipped, there is very little difference between coast weight and our weight, I think. On the shipments for a number of articles, Mr. Stephens has got exhibits that will show that.

I don't know what your stuff weighs per car. I don't know what the weight of a carload of it would be, except to surmise it. Under equal conditions, I don't think there is any difference in weight between fir and pine. For instance, take green pine timber and green fir timber, the green pine timber will weigh more. But we probably put our lumber in a pile longer and let it dry there than any other section, and its costs money to do that, so that we don't gain anything by it, practically. A pine board that has been on the pile for some considerable time will probably weigh less than a fir board that has been in the pile a shorter time. If the fir board stayed in the pile for the same length of time there would be very little difference.

I know that eastern Oregon lumber is packed and air dried

before it is shipped. I am willing to admit that no such practice as air drying maintains on the coast, but when we put our lumber into a pile and dry it, it is costing us money to do it.

Coming back to the question of weight, I will admit that green lumber is heavier than dry lumber at any time. I will admit, to a certain extent, that is the way our lumber is handled in interstate commerce. Probably 22 or 23 hundred pounds might be a fair estimate of what we ship out, in the shape of dry lumber, in interstate traffic.

The coast lumber is not dried as a practice. I know something to a certain extent about the weight of green coast lumber. The statement that it weighs 2800 pounds a thousand feet is about right. If we handled our lumber in the same way the coast does, we would be at the same disadvantage they are.

Re-direct Examination.

Generally they dry kiln their finished lumber from the coast. Flooring, for instance, is kiln dried. Air drying or kiln drying in the Spokane district costs something, and it equalizes the difference in freight on account of the weights, or thereabouts. It costs in this way, that in piling lumber to dry it, it has got to be handled at least twice more than lumber loaded green into a car. We put it in piles to dry. We put it in single piles and stack it with spaces between. We have got to do that for another reason. We could not ship our pine green, as it would spoil in transit. It would stain blue. We are compelled to put it in a pile to protect it. Our pine lumber is loaded into a box car, and that car is sealed. If that car is six days in transit, probably 50 per cent. of the lumber would be spoiled, through being stained blue. That color will remain. It goes right into the board. That same thing does not apply generally with the coast lumber. The coloring process does not take place with the coast lumber. To a certain extent it would take place with the southern lumber. That is a disadvantage our lumber labors under. We could not ship our lumber without it stood in a pile for at least 60 days, and have it in any kind of condition to ship on a long haul, where it would be closed in a box car for any length of time. Even after our lumber is piled up, it sometimes stains. We have to kiln dry all our high line stuff, in order to save it, and keep it in condition for the market. Most of the mills cannot afford to pile their clear lumber in the yard, because it will stain, even there. We have atmospheric conditions in

the places where the mills are located, which causes that, especially in two or three months of the year. Our lumber does not stain to so great an extent in dry weather. It will stain some, and great care has to be taken in handling it. That results in our carrying large stocks of lumber, while the coast lumber goes right into the market. When I was in the east trying to sell, I went there for the purpose of selling the high grade lumber we had.

Taking Nebraska, for instance, I would not want to say that the southern sales have greatly increased in recent periods, but I think they have kept upon a par with the general movement of lumber from the south in that territory.

Taking the Spokane territory, there has been something in the way of building railroads that has given an impetus to local business conditions. The Northern Pacific has been doing a great work there, and so has the Great Northern and the Chicago, Milwaukee & St. Paul. All of that work is practically completed, except on the Chicago, Milwaukee & St. Paul, and that road, so far as securing timber for its construction is concerned, is practically through. It might take some weeks or some months yet to finish the supply for that road. In competing with the coast, quality counts, and we have got to make the price an object for a man to take our lumber. In the territory, for instance, east of the Missouri river, and the Minnesota Transfers, we could not get any price at all for our stuff on the same terms as the coast.

There is a difference between the timber of the south that is called long and short leaf pine, but it does not make any difference in the price. One is selling at practically the same price as the other.

When I say that the coast timber is better than ours, I say that it is both better in the trade, and sells better, and that it is better to manufacture, and, therefore, worth more money in the trade, practically speaking.

I feel that Baker City has a better character of timber than we have, because they have more of one kind of timber, rather than so many varieties.

As against Bonner there are some points where the rate is equalized. For instance, the rate from Bonner and the rate from Spokane, to the Minnesota Transfer, was the same. From some intermediate points to other intermediate points they had the better of it, but as we went east we gradually went into the same rate. On that map I have the distances from shipping points on the Northern Pacific to Spokane, and shipping points on the Great Northern to Spokane.

In referring to this rate, and about routing it from the Spokane territory down into Nebraska, it went over the O. R. & N. All the points on the O. R. & N. up there are common points.

Baker City could not get into the State of Nebraska other than by the C., B. & Q. at the rate they had on the Union Pacific, if they had no joint rate. There was no competition, therefore, between Baker City and the Spokane district.

On the cut of lumber in the Inland Empire district on No. 4 and No. 5 boards combined, the percentage would make practically 17 to 20 per cent., or a little more than that.

The terms or designations applied to our product as to grades of lumber do not mean the same thing as they do when applied to the product of the Pacific Coast territory.

I understand that the Standard Oil Company or the Amalgamated Copper Company control the operations of the Bonner mill.

The output of the big Blackfoot mill, and the different mills about there, to the extent of about 50 per cent., goes to the Amalgated Copper Company at Butte, and the rest is shipped to outside markets. They are not complainants in our case. I don't know whether they are in the Montana case or not.

During the years 1906 and 1907, the Inland Empire's stock increased very rapidly.

The timber in the Klickatat country is not largely fir. There is pine in the Klickatat valley. The fir timber is over to the west of the pine timber. There is a region of both pine and fir there.

The mills that are complainants here, as I call them to mind now, have now big stocks on hand. As I remember it, the mills that are complainants in this case, have on hand probably 60 per cent. of the lumber in the Inland Empire.

In 1906 and 1907 we did dispose of a large quantity. We sold quite a lot, that is, the district did, but the stock on hand at the present time is, as I say, about 60 per cent. That is, the mills that are complainants in this case have about 60 per cent. of the stock at the present time in the yards, at the different mills.

I cannot say just how many million feet of stock is on hand this year, as compared with the stock on hand last year, the first of January, 1907. There is a greater amount on hand now than on January 1st, 1906, by probably 125,000,000 feet. Most of these mills have been operating for four years, or

something like that, with the exception of the Potlatch Lumber Company. Most of them were started about 1903.

Mr. Stephens presented (Record page 205) a further statement from the Forestry Department, as follows (Record page, 206):

UNITED STATES DEPARTMENT OF AGRICULTURE.

Forest Service
Washington

S-M February 28, 1908.

Branch of Silviculture
Mr. H. M. Stephens,
New Willard,
Washington, D. C.

Dear Sir:

In accordance with a promise made by Mr. E. H. Clapp I am very glad to send you the prices which are being obtained for timber in the Anaconda Copper Mining Company's timber sale on the Bitter Root National Forest.

Anaconda Copper Mining Co.	Timber Sale
March 21, 1907	Bitter Root.
Live and Dead Yellow pine	$4.01 per M
" " " Douglas fir	$4.01 " "

Very truly yours,
(Signed) Wm. T. Cox,
Assistant Forester.

Mr. Stephens filed an original bill of lading, dated February 23, 1907, of the Northern Pacific Railway Company at Cosmopolis to the Spokane Sash & Door Company, showing feet and pounds for a carload of kiln dried fir flooring.

EXPENSE BILL COPY. (Record page 208.)

Car Initials P L Car No. 647548 Date 11/13/1907 W-B. 32

Pro. 5410

Spokane Sash & Door Co. Spokane Station. 11/23/1907

TO NORTHERN PACIFIC RAILWAY COMPANY.

For Freight and Charges from Cosmopolis

Description of Articles.	Weight	Rate	Amount
Fir flooring	54200	20	10840

O R

Copy, Not to be used as an Expense Bill.

(Record page 209.)

WASHINGTON MILL CO.

Spokane, Wash.

Grays Harbor Commercial Co.

Seattle, Wash.

P. R. R. Car No. 647548.

1 x 4—	8′	No. 2 VG Fir Flg.	3515′	
"	10′	"	4017′	
"	12′	"	3920′	
"	14′	"	5049′	
"	16′	"	10432′	26933′
"	8′	No. 2 SG Fir Flg.	1053′	
"	10′	"	470′	
"	12′	"	1600′	
"	14′	"	1013′	
"	16′	"	1520′	5656′
				32589′

Mr. Stephens also filed an original bill of lading from Scotia, Washington, a little way east of Spokane on the Great Northern, to the Holland-Horr Mill Company at Spokane, showing the amount of timber and the weight of a carload of green timber, the feet being 17,288 and the weight 75,600 pounds.

(Record page 211.)

FREIGHT BILL.

2/17/08 HOLLAND HORR MILL CO. Freight Bill No. 1614.

SPOKANE, WASH.

To SPOKANE FALLS & NORTHERN RY. CO., DR.,
For Charges on Articles Transported

PENRITH, WASH. 2/16/08 G 15969

G V L Co. (Stamped) GREAT NORTHERN RY. CO.

Number of Packages, Articles and Marks,	Weight	Rate	Freight Charges	Total
Lbr.	75600	45	34.00	34.00

Received payment for the Company, 2/18/1908.
E. C. Fleming, Agent,
Per O K Collector.

(Record page 212.)

STATEMENT.

Scotia, Wash., Feb. 13, 1907.

Holland & Horr Mill Co.,
Spokane. Car 15969.

In account with
GRAHAM VALLEY LUMBER COMPANY.
Rough and Dressed Lumber and Lath
General Merchandise, Feed and Flour.

112	3 x 12 x 18	6048
10	3 x 14 x 18	630
10	12 x 12 x 18	2160
5	12 x 12 x 20	1200
95	3 x 14 x 20	6650
10	3 x 10 x 24	600
		17288

W. C. UFFORD, a witness for the complainant (Record, page 213), testified:

I live at Spokane; my business and occupation is the lumber business; have been in that business about eight years in the Spokane district generally. I am now operating a mill 24 miles east of Spokane on the main line of the Great Northern Railroad.

Our parent company is The Spokane Lumber Company. I am its manager, and secretary treasurer of the company. Have been such since its organization in 1900.

It was reorganized in 1903 with its present owners. We took in more capital and more people at that time. The business is conducted under the same name, however.

We are said to have exploited the eastern markets first from the Spokane district. We made our first shipment in 1900, and then we made some more in 1901. They were not considerable, but the product of our little mill; practically all that we produced we shipped east during those two years. We shipped into North and South Dakota, Nebraska, Minnesota, Iowa, Wisconsin and Illinois, generally speaking, possibly some other districts that I do not now remember, but conditioned upon the different kinds of lumber that we cut out of our trees, we sent it to the markets that would take it, and those were the markets.

Our rate has not always been the same from Milan. At the time we started in the lumber business in our district, there was no real Spokane rate. There was a rate of 40 cents existing to the coast. At that time we got our lumber from the coast. The most of the lumber used in the Spokane district in the early days was brought from the coast. There were some little mills operating in the Spokane district, but they were not large enough to supply the demands of the city and the district round about. We had to buy from the coast. Our district was not considered as a lumber producing district. Our timber was not considered material. The first purchases of timber by those who have made money in the east and went west to buy timber were made on the coast. It was not until some years later when lumber commenced to sell at a higher price that the smaller varieties and the poorer qualities such as are grown in the Spokane district generally were considered. After we commenced our shipments to the eastern markets and perhaps by that brought the attention of the in-

vesting public to our district, the investments commenced to be made. That was in the years 1902, 1903 and 1904. In 1901 and 1902 we only produced about 6,000,000 feet a year. In 1906 and 1907 from sixteen to eighteen million per annum. After we had operated a while, we asked the people over whose line we had to ship our product to establish some basis of rate on which we could exploit our eastern markets, and they said that for the time being they would let the coast rate of 40 cents apply, and we attempted our first shipments on the basis of the coast rate. A little later we found that they would not permit us to go into the Dakotas in competition with the coast products and in competition with the Kalispell product; that is, the Montana product generally. I went east and took up the situation generally with the traffic officials and they put our little district into a rating by itself, which gave us a rate about five cents less than the coast rate, and a rate from one to three cents more than the Montana district generally into the treeless district of North Dakota, to which we could ship. That took care of us about to Devil's Lake, the central part of North Dakota. There we met the competition from the Crookston, Minnesota, mills and the mills of that North Dakota and Minnesota district and there we could not hope to ship. It was carrying coals to Newcastle. We did not ask to be permitted to ship into their district. Our 40 cent rate from the coast commenced to take effect there, and we did not post it because we did not attempt to market. We did, however, use the 40 cent rate into Minneapolis, and beyond the transfer to some small extent, and we could pay it on the very slight portion of our product that we would ship there. That is the high grade stuff. It was not very material what our rate was on the high grade stuff, because the percentage of the freight to the price was less. The great bulk of our produst, however, is of a common character and must be marketed in the treeless districts of North and South Dakota and Nebraska.

By the poorer timber, I mean the timber of the Rocky mountain district generally. It is all of the same general character; not all alike, but from Spokane, which might be considered the western border of the Rocky mountain timbered district, to the top of the Rocky mountains. That includes a small portion of the northeast corner of the State of Washington, the northern Panhandle of Idaho and the western part of Montana from the slope of the Rocky mountains down. That whole territory is to a greater or less extent covered with

the same general class of timber. The growth is small, the timber is scattered. It is probable that it would be fair to say there was an average of five times as much timber on an acre of ground in the coast district generally as there is in that district generally, on account of the fact that the trees in our district are small and short. In our district also the limbs grow close to the ground, the timber is knotty and the character of the timber here produced, approximately 90 per cent. is of what is termed a common character.

Spokane is about 250 miles from the foot of the Cascade mountains. There is no timber whatever in that whole space between Spokane and the Columbia river. From the foot of the Cascade mountains to Spokane is our wheat belt. It is the treeless country of our district, like the Dakota country. There is no timber in that whole territory for approximately 200 to 250 miles.

The two companies operating on the east slope of the Cascade mountains that are parties here have, I understand, something more than half fir. I presume their holdings are fully three-fourths fir. Their holdings extend to the top of the Cascade mountains on the east slope. They do have some of the timber of the same general character that we do, as they reach down toward the river and get into the foot of the foothills. For instance, they are members of the association of lumbermen which has Spokane as its headquarters, on account of the fact that a small portion of their timber is of the same general character as ours, the large portion of their timber, however, being of the same general character as the coast; they are members of the coast association also, to get records that each district compiles. The most of their product which is of the character that ours is, is sold locally. The mills of the Cascade Lumber Company at North Yakima being situated in what is now perhaps the greatest fruit district anywhere, put the larger portion of their coarse product into fruit boxes, and that which is not adapted to fruit boxes is sold largely at home for small construction, little houses.

Taking the district I have been terming the Spokane district, that is northeastern Washington, northern Idaho and western Montana, there are about eight different kinds of lumber, western pine chiefly, nearly one-half; white pine about 10 per cent. I would say; perhaps 40 per cent. western pine and 10 per cent. white pine, the pine growth therefore being about half. Our own stand is about one-third what we used to call tamarac. The department, I think, calls it larch and we term it larch. The district generally would not have to

exceed 25 per cent. of that larch or tamarac. Then the balance is perhaps equally made up of what the department terms Douglas fir, but it is a small growth fir, the trees are hardly as large as our trees of other kinds of woods. It belongs probably to the same general family as the coast, but our district is dry and the trees never did grow large. The balance of the stumpage would perhaps be equally divided among that class of Douglas fir which we call red fir, and white fir which is even yet smaller; spruce which is about the same size, and cedar which is larger but coarse in character and full of knots. We make no shingles whatever in our district because it is so full of knots, and there is no finish at all in the cedar timber in the Spokane district; and then hemlock, and that is the poorest we have and of little value.

White and yellow pine make two kinds, larch three, the two firs five, and hemlock six, and spruce and cedar eight.

Perhaps three to four feet at the butt would be a very large tree in our district. Our own logs last year required about twelve to make 1,000 feet of lumber, and the coast trees, for instance, would perhaps average one log to make a thousand feet of lumber. We speak of four-log timber. It runs four logs to the tree quite frequently. That would be 65 feet. I would think 75 feet high of timber that would be put into saw logs would be the limit of our size. Saying that it would take twelve as against one, I meant logs. The logs in the Spokane district perhaps would average a hundred feet to the log and the logs in the coast district would average a thousand feet to the log. The smaller they are the more they cost to handle.

Our present mill was completed and started to run January 14, 1903. It is a single band mill of modern character, with a capacity of approximately 50,000 feet of lumber per day of ten hours. It is a fair, medium size, representative mill of the better class of small mills of the district.

I have told the character and class of our product by stating that we had eight different kinds of woods, and showing the percentages, and I have stated that approximately 90 per cent. of our product was on lumber of the coarse variety and small, cut into small stuff, used for the construction of small houses, small buildings in agricultural districts, and the little tenement houses in the towns. We do not have any city trade. We don't attempt to supply the material which goes into the construction of large buildings at all. I have a home in Spokane and am in the lumber business, and yet I had to go to the coast to buy the large timbers that went into the construc-

tion of the basement of my own home. I also bought the finish for the upper part of that same home from the coast, and our floors are coast fir. The only thing we were able to use in our own home of our own product was the small studding that went into the partitions, the two by fours, two by sixes and two by eights, and the sheathing boards that were nailed onto those, that were covered up with something else.

Some of our people are interested quite heavily in business blocks in Spokane, have built a good many in the last year, and the most of the product which enters into that construction, not iron or steel, has to come from the coast, and most of the fir flooring comes from the coast.

About a year ago, realizing that our district as a whole was up against it for a market, I took the liberty of calling upon the director of purchases of the Great Northern Railroad. I stated the situation as it was felt in the Spokane district at that time. They were buying, as we were advised, a large portion of the railroad construction material which they used in our district, from the coast and shipping it in there. We told them that the industry was being pushed, in so far as it was possible, by mills located on their lines who had a character of timber peculiar to its district alone, that it was hard for us to market, and we felt we were entitled to their best efforts to help us find a place for it, and certainly all the little stuff that they used, in short culverts and in railroad ties and in things that they could use of a small character in our district, they ought to buy from the mills at home. He said that had not particularly occurred to him before but he believed it was right and he said he would take special pains to use all possible in the home territory of the product manufactured by the mills in that territory, and he asked us what we could produce it for, and I went into it with him at length, covering the cost of logs and manufacture in our district, and he fixed a price of $12.50 for railroad ties, which are seven inches by eight inches square and eight feet long, and he said that the mills of the district could produce as much as they cared to of the coarser kinds of wood and put it into railroad ties and they would use it in the construction of their new lines in our district, and in the repair of their old ones. About 20 per cent. of the total cut of our own mill last year went into that class of stuff for the Great Northern Railway people. This year we attempted to do the same, but he said that they would not be able to use any to speak of, and if they could buy it so cheap from the coast that they would not be warranted in using our product at any price that he could see that we could afford to make it for.

I said we furnished ties at $12.50 per thousand feet. That makes 46-2/3 cents apiece. We would be very glad to continue that contract at even a less price. The other 80 per cent. of our product went into small piece stuff, 2 by 4s, 2 by 6s, 2 by 8s, 2 by 10s and 2 by 12s, and 1 by 4s up to 1 by 12 boards of the different grades of common lumber, which we attempted to sell in the treeless states that I first mentioned, North and South Dakota and Nebraska. A few of the better grade of common lumber that those states could not use we sold in Iowa and in points beyond the Missouri river. Those better grades of lumber that were not used in the same states that I speak of we did not get much more money for than we did for our poor stuff, but we had to dump it some place where it could be used and get what we could for it, and the northern and southern mills made the price and we had to meet it if we sold it, and we did meet it and got rid of it. I have a typewritten statement showing the states that we moved our product into.

It is probable that the factory plank that western pine is said to produce a large quantity of, and which is of high value, may be mentioned, and I will explain that. There is one way in which we may be able to get rid of possibly 20 per cent. of the product of the western pine log, and that alone, and that is to cut it into factory plank, used for sash and door purposes. Now, factory plank is of a peculiar character. The knots are large, but between those the lumber is clear. There may be a hole where the knot has dropped out. The lumber is not suitable for one inch stuff, because the knots drop out and leave these holes. If cut into one inch lumber it would be so poor in character and quality that it could hardly be used except for the cheapest kind of use; but cut 1-5/8 inches thick and sold as 1-4/8 inch material, kiln dried and surfaced, with the limit of expense put upon it to save it, the product may then be used in the sash and door factories, and perhaps 20 per cent. of our product would cut that way. Now we could not ship it and pay the freight that there was upon it, and get anything out of it. So we inaugurated a little department that we call our cutting room, and the poorest half of it was turned over to that cutting room, where we cut the knots and the holes out and the defects out and cut it into different sizes which make the different pieces that go into window sash and the different pieces that go into door construction. Those we sold to the large sash and door factories in Wisconsin and along the Mississippi river.

But in operating that cutting room approximately thirty per cent. of the plank that we turn into it would be burned up; that is, it was waste. We cut it out. It was better to waste 30 per cent. of the plank than it was to pay freight on the whole plank. Six per cent. of our total production therefore, after it was manufactured and all of our expense put upon it, we found it cheaper to waste and burn up, for the sake of increasing the value of the balance of it that would stand the freight charges. This year we have no market for those cuttings, and we have been obliged to discontinue that cutting room, so we cannot cut that product into factory plank. We must put it into the grades of common lumber and hope for a market for it in the agricultural district.

(Ufford Exhibit No. 1, offered in evidence, Record page 231.)

Referring to this table, the witness testified:

This table contains all the shipments that we made last year. It refers to our own mill. It is a tabulated statement of the shipments of the Spokane Lumber Company from Milan, Washington, showing the different states into which we shipped our product, and the number of cars that went into each state, being all of the shipments that we made that are affected by the great advance which went into effect by the new tariff of November 1st, 1907. It shows the estimate of weight of 51,600 pounds.

I got that estimate from the records in the coast case from Mr. Woodward's testimony. He is the traffic manager of the Northern Pacific Railroad, and it is his statement of the average weight of the shipments of lumber from the Spokane district for the first nine months of 1907. It shows the total amount in dollars and the total amount per car that the freight would amount to on the old rate and the same on the new rate, the difference per car, the actual number of miles that the car traveled in going into each state. It also shows the actual weights as shown by the freight expense bills which we paid, the actual dollars which we paid in freight per car, the actual dollars which we would have paid in freight per car under the new rate, and the difference in freight per car. That applies to the full year of 1907, and it covers 425 cars. We did not ship all this stuff kiln dried, but we never shipped anything green for two reasons. The product of our district would spoil in transit if shipped green, if it was three days in a closed or box car.

It would stain and become permanently discolored so that it would reduce even the small percentage of high priced lum-

ber that we cut to the basis of the very lowest priced lumber we cut, and when manufactured into certain things it would not be fitted for those purposes when discolored, and therefore it would practically spoil it. So we have either to kiln dry it or air dry it, dry it at whatever expense it may be, practically all of its except what we did ship to the railroad or what we are from time to time able to sell to the railroad, and that we sell f. o. b. We have at our mill a dry kiln which cost us about $25,000. That has got nearly ten miles of steam pipe in it, for the purpose of kiln drying our product, and ours is one of the little mills.

(Ufford Exhibit No. 2, offered in evidence, Record page 234.)

Referring to which the witness testified:

This exhibit covers a statement of all lumber shipments for the year 1907 affected by the change in rate, and shows the same data that the other did, except that it shows the number of cars that we shipped, at the rate we commanded from the railway company previous to the advance, what the freight paid would have amounted to under the new rate. It used not only the 51,600 pounds shown in Mr. Woodward's testimony as a basis, but also the actual weight on which we paid freight, and it summarizes it at the bottom, and also on the first sheet, which shows the total 425 cars. We had under Mr. Woodward's estimate of 51,600 pounds to the car 21,000,930 pounds. The amount of freight at the old rate would have been $234.86 per car; under the new rate $261.27 per car.

The total average mileage hauled, and this included all of our shipments even as far as New York state and throughout the central west, and covered all the rates, was 1441 miles. It showed an average actual weight per car for the 425 cars of 50,594 pounds; the actual average freight rate paid per car $234.21, which under the new rate would have amounted to $258.53, or a difference of $24.32.

The actual weight was less than the estimated weight by just about 1,000 pounds. I could not give the average mileage west of the transfer points. I could only estimate that, but I have the average mileage by states. Our shipments into North Dakota averaged a haul of 1115 miles. The actual freight paid on that average haul was $204.21 per car. This is not all kiln dried stuff, but it is all completely and thoroughly dried, air dried or kiln dried. Such portion of it as needed to be kiln dried, we kiln dried, but all of it was dried before shipment was attempted, at whatever expense was necessary.

To air dry it we have to prepare yard room and put it into piles, and wait for it to dry. We only turn our product about once a year. We shipped approximately 16,000,000 feet of lumber last year. We manufactured approximately 16,000,000 feet of lumber last year, and we have on hand and carry about 16,000,000 feet of lumber every year. Our stock is increasing very rapidly. What I mean by that is that it increased very rapidly last year. We are not running at all now. We could not run now.

Our North Dakota shipments average a mileage of 1115 miles with an average weight of 49,372 pounds. We paid $204.21 per car. The new rate would have made us pay $223.52, or an increase of $19.31.

In North Dakota our average rate was about 36-1/2 cents, but we had until November 1st the rate which our railroad permitted us. We are 24 miles east of Spokane. When the November 1st tariff was issued they put the whole district under the Spokane rate and raised us about seven cents, or to 40 cents for the western North Dakota territory, 40 cents to the first point in Dakota, and then 41, 42, 43 and 44 cents to the middle of North Dakota, and then 45 cents, which rate applied to the Transfer. The average raise was from 33 cents.

Taking all the distances to which our shipments went, our average increase was seven or eight cents. You see we saved perhaps a little more than some others, because we had not been permitted to do business in there before the increase Our shipments into Nebraska averaged a mileage of 45 cents to most of those points. There were a few points that we reached where the mileage was long, where the rate was 50 or 55 cents.

The average weight of a car into Nebraska was 50,484 pounds. Under the old rate we paid $222.81; under the new rate $244.30, an increase of $21.49.

Into Wisconsin we shipped 95 cars. Now this included that cut up stuff that I spoke of, and all our good stuff; 95 cars out of about seven or eight hundred of total shipments are manufactured. The average weight into Wisconsin was 52,717 pounds, the average mileage 1,755. Our rate at that time was 50 cents. Our present rate is 55 cents. The old freight collections that we paid were $263.58 a car. Under the new rate they would be $289.94, an increase of $26.36.

Into Iowa the average mileage was 1786 miles, the average weight per car was 52,116 pounds, the average freight paid $259.38, the freight under the new rate would be $285.12, an increase of $25.74.

On our Minnesota shipments, the average mileage was 1443 miles, the average weight of a car 47,488 pounds. Most of that went on a 40 cent rate. It was special stuff. It was like carrying coals to Newcastle. It was stuff that the Minneapolis market was short of, which they had to buy some place. We found out about it and manufactured it specially for them and shipped it there. The total was only 36 cars out of the seven or eight hundred which we shipped. The freight paid was $197.39; the freight under the increased rate would be $221.18, an increase of $23.79.

Into Illinois we shipped 29 cars of similar character, an average mileage of 1858 miles; average weight 49,997 pounds, old rate $249.98 per car; under the advanced rate we would have to pay $274.88, an increase of $24.90.

Into South Dakota, which is the territory that our product belongs to more than any other place, we were only able to ship 28 cars out of seven hundred manufactured. The average mileage was 1456 miles, the average weight was 54,358 pounds, on which we paid $258.14 a car, and under the new rate we would have paid $294.25, an increase under the new rate of $36.11.

Now, you will notice that is a third greater increase than the increase to any other point, and yet that is the district into which we ought to be permitted to ship our product more than anywhere else. Of course, we know where that increase is, and our own trunk lines are not to blame for it.

The connecting lines into that territory get a larger haul per mile for the local charge than any place else on earth that we ever heard of, and the larger lines have absorbed most of it, until as I understand they became tired of the selfishness of the connecting lines and refused to do it any more, and when the new rates went into effect, the through tariff provides in some cases a division under which the connecting line gets an even larger division than their local published rate, and the through lines say that they absorb all that they care to of it, and it makes us pay a rate which is entirely prohibitory. The trunk lines are cut out of the business, the mills that properly should supply this district are cut out of the business, and it is turned over to the south at a rate from ten to fifteen cents or an average rate 12-1/2 cents less than we have, and their southern mileage is about the same as ours. Our present rate into South Dakota would average about 55 cents against the southern average in that territory of 35 to 40 cents. Our own home lines say that they are powerless to do anything about it.

Into Colorado we shipped five cars with an average mileage of 1285 miles; an average weight of 48,824 pounds to the car; freight paid $213.11. Under the new rate we would have to pay $236.58, an increase of $23.47. We shipped one car into Montana, one car into Michigan, one car into Pennsylvania. That average mileage was 2346 miles. The freight we paid was $324.03; under the new rate it would have been $351.67 or an increase of $27.64; and into Wyoming we shipped one car.

The larch or tamarac in the Spokane district does not have any finish in it to speak of, or very little. It chips or checks to such an extent that while the contractors and architects did try to use it a few years ago it has practically been given up and we do not save it at all at our mill any more. It goes into our common dimensions small piece stuff.

The mills on the Northern Pacific east of Spokane 18 miles, and from there east, had practically the same shorter rates, as we call them, into the western North Dakota territory that we on the main line of the Great Northern did.

Of course, it is understood that there was a very great car shortage everywhere last year. We were not able to get cars, and would have been able to ship a good deal more lumber last year if we had been able to get cars, but there was so much railroad construction everywhere, we understood they had to furnish cars for that, and we took what we could get, what was left. That railroad construction in the territory adjacent to Spokane is almost entirely over. The purchases and shipments of lumber for any railroad construction in our immediate district are about over. The Milwaukee is building through there, and has been buying a lot of coast material and shipping into our district for use in its railroad construction, but the purchases are nearly over and their shipments are nearly all made. There have been several interurban and suburban electric lines which have been built, but they are nearly all finished.

Referring to the years 1906 and 1907, the south and the coast both enjoy a very large export trade. When they can sell their lumber abroad, they do it at the higher prices they get then they can get for it at home. Both in 1906 and 1907 their export trade was not very good, but the demands upon those districts generally for car construction and railroad construction material were very, very large. Those people in these years did not care for the markets furnished by the agricultural districts, and our business therefore was better than it ever had been before. In 1906 our district produced more

than it ever did before and shipped more than it ever had before up to that time, and yet our car shortage was so pronounced that we were unable to ship within a hundred million feet, or one-tenth as much as we produced.

During 1907 that same condition prevailed, but we had hoped to overcome it. We produced perhaps a little more, and our shipments increased to some extent. Yet while it was the year of largest production, the largest shipments that we ever had, and probably the most prosperous year that the lumber industry has ever experienced anywhere, we were unable to get rid of our product, and we have two hundred million feet on hand, or one-third more than we had on hand two years ago, and this year we are out of it entirely. There have been no shipments made from our district at all, and we could not make any that would give us the cost of production.

I tried to sell dimension stuff in Minneapolis and in North Dakota when I came through, to one of our best customers, in which line of yards some of our own people are also interested, and they told me it was useless for me to attempt to make them any sales; that we could not make them a price that would be as low as they could buy it from the coast; that even southern pine had recently been shipped to Minot, North Dakota, so they were advised, and that the coast people were making at that time a price of $19, $19.50 and $20 per thousand into that general district delivered. When I say the coast people, I mean the northern Washington coast people, who are able to ship on the Great Northern line. I was talking to a Great Northern line yard man. Taking our freight out of that, it would only give us $8 per thousand at our mill for that product, which would be but little over half what the average cost to us would be, so it was entirely impossible for us to sell to our own people in our own home territory.

I attempted to do some business in Iowa, where we had sold the better class of common lumber, but they said that the south was making prices, that they had a far better rate than we did, and when they chose to come up into our country and get rid of their lumber they were enabled to, by reason of the better rates, and we could not sell them at all. We shipped two cars in January.

Those purchasers said that they felt the coast dimension stuff was worth from 50 cents to $1 more than our own product, 50 cents to $1 per thousand feet, that they would have to buy our product a little cheaper than they would the coast product, in order to use it, because our dimension stuff is

larch and the coarser grades of fir, and full of knots, brittle and brash, breaks more easily than the coast dimension stuff of the same character. If we sell common lumber we have to meet the prices of the man who has the ablity to make the market prices. We have not the ability to make the price. Our district is a sort of a stepchild now. I think that same condition prevails covering all of the lumber producing area in the Rocky mountain district from Montana to the Spokane district.

We could not ship now into South Dakota and Nebraska under the present market price without losing several dollars a thousand. We have a man who lives in Nebraska, who has a very strong personal following, and his own friends, his own people, are not able to give him any business. His salary and expenses up to date since the first of January are far greater than the total of the invoices covered by the sales that he has made since the first of January. We could not begin to meet the competition from the south or from the coast either, when the coast chose to make the prices, and they choose to make them when they do not have an export or railway trade.

We have the same rate all through the Rocky mountain districts through Montana and into the Spokane district. We have the same general rate over all roads into the Nebraska territory regardless of the routings. Under the old tariffs the Great Northern and Northern Pacific got into Nebraska by the Burlington. The Great Northern and the Spokane Falls & Northern had the same rate into Union Pacific territory in Nebraska that they did into Burlington territory in Nebraska, but we did not ship so very much via the Union Pacific. Our friends were on the Burlington road, but it was almost impossible for any road off the Northern Pacific to get cars to get into the Nebraska territory, and in so far as possible our Nebraska shipments were sold in the northwest corner of Nebraska because going that way we were enabled to give the line on which we were located and from whom we asked our favors, the benefit of all our business that we could. That is the Great Northern. Our shipments were largely routed via Sioux City; it was pretty hard for any mill off the Northern Pacific to get cars to get into Nebraska last year, the car shortage was so pronounced for everybody.

The rate to the Spokane territory on commodities generally, that enter into the cost of living, are greater than they are to the coast. Spokane is said to be a town where the cost of

living is as high as any town outside of Washington and New York. The Spokane district generally is a high cost district, and an expensive place to live in. And everything that is not produced at home, and everything that we have to buy east we have to pay the freight to Spokane, which in very many instances is as much as the cost of the thing itself; and the rate is the rate from the eastern territory to the coast, plus the rate back, which is almost twice as much.

The rate is not the same from Milan, from our place of business to the Minnesota Transfer points as to Missouri river points. It is five cents greater to Missouri river points. Shipments from the Spokane territory to the Missouri river and to the Minnesota transfer have to be hauled through Kalispell. From Kalispell they take the same rate under the new tariff to Missouri river points as they do to the transfer points.

Cross-Examination.

The cars that we shipped in 1907 went into the northeast corner of Nebraska, or pretty well toward the center, via Sioux City and into the district around Broken Bow and west of there. The statement shows that the number of those cars was, I do not remember. This list shows about seven hundred cars of lumber manufactured, something between that and eight hundred. Ten per cent. of that was not select, but it was better than common. Not five per cent. of our product was select. Out of 16,000,000 which we inventoried, 87,000 feet was select, on January 1st. All but about five per cent. was common. Part of that was small dimension stuff, part boards, ship lap, and part of it was dressed and matched. Outside of our select I think you have pretty nearly covered the other kinds of lumber. We sent a great many cars into Minnesota and a good many into Iowa, South Dakota and Illinois.

If the testimony in the case given by other witnesses is to the effect that they have never been able to get into Nebraska or South Dakota or Wisconsin with common lumber, and that testimony is correct, there must be some difference between our common lumber and theirs, or else the coast must be able to go somewhere else with it to a better advantage than we can. They have got the world. They do not need to make small dimensions.

We don't compete with northern white pine in all this territory I have described. Wisconsin, Minnesota and part of

Nebraska is the territory in which common northern pine is sold, that is the territory in which it used to be sold, but you must understand that the northern pine territory is rapidly decreasing and they are not the factor in the trade they used to be. We do not pretend to get as much for our product as the northern mills do.

I said during my direct examination that because of shipments from Cranston I would have difficulty in going further east in Dakota than Devil's Lake. That has always been true, more or less. I said that there were certain kinds of lumber which they did not use in western North Dakota, the very best grades of common which we did not have but little of. They could not use that in either of the Dakotas, but they did use it in Nebraska and we had to sell it somewhere. They used it in large quantities, in Iowa, and they paid the highest price there of anywhere. We could get the most for it in Iowa, and so we went to Iowa with it, and we took what we could get for it, and were much obliged for it, because we had to sell it. That was the better grade of our common lumber, some of the one inch finish, some of the wide boards. I sold twenty-five cars of boards, wide boards, in Iowa, just before our recent unpleasantness. The men who bought this did not buy fir from the Booth Kelly Company of Eugene, Oregon, for instance, because the Booth-Kelly Company could get more for them at some place else. I don't remember about what I sold those boards for. One of my competitors asked me that, and I did not want to tell him, but I will have to tell you now. He sits right behind me. He tried to get that busines but I beat him out, and if I remember rightly, we got $26.50 per thousand feet for these special twelve inch boards delivered in Iowa. The freight is not yet paid, but I will tell you what it will be. We are not parties to the injunction. We are paying what we have to pay to get deliveries. It would net us somewhere from $14 to $14.50 at the mill. Those boards are 12 inch, 20 feet long. We don't make anything longer than 20 feet.

In 1906 I sold lumber in Iowa and Nebraska, never in Kansas, but we have each year had to market a certain portion of our product in that territory, because there is no demand for at any place else.

We have to grade our lumber as the eastern mills grade their lumber, and sell it where we can, for whatever market price they make. In the Iowa territory the northern and southern pine mills both are competitors. The dealer who can

use the southern pine buys it, because he can buy it so much cheaper than northern pine; but if he can't use the southern pine and still can't use the high priced article we perhaps can talk him into paying a little more for our product at times. That depends on the salesman and on the dealer. Our product, however, comes more closely into competition with the southern pine than it does the northern pine. We call it yellow pine.

I don't think much stumpage could be bought in the Inland Empire for much less price than the values that have been given in evidence here, but that is not on account of what we can get for it today manufactured. It is on account of the fact that it has been fashionable, for the last few years, to buy stumpage as an investment, and we have bought and sold stumpage on speculation, where we have paid more than we knew could be obtained for it by manufacturing it, and we have sold it at a profit. I think the same conditions prevail on the coast as do in our district, as I have just stated. People have paid high prices for coast stumpage. People who have put some of their logs into Puget Sound have got fancy prices for their Coast stumpage, and they look for the time to come when they can get fancy prices again.

When Mr. Bloedel stated his lumber at the highest average price of any witness in the coast case, and he estimated that it was worth two dollars a thousand, I could probably testify along the same lines that Mr. Bloedel did. I am on that side of the case and the statement would be correct in both cases, but along the line of his testimony, arguing from the same general standpoint with Mr. Bloedel, I would say that stumpage is worth what you can get for it, no matter where it is, and no matter what you pay for it. But you cannot get for it on the Coast or in the Spokane district as much as that, if you manufacture it intelligently in both places, and ship it where it has to be sold. You can get two dollars a thousand more for the average coast product, manufactured, than you can for the Spokane product or the Rocky Mountain product manufactured and from that standpoint I say that it is worth more. There have been sales at different prices.

If the testimony in the coast case stated that the rail mills of western Washington have never been able to sell common lumber in eastern Nebraska, then all of the testimony that could have been produced was not produced, because we have sold common lumber in Nebraska for higher prices than we have sold our own. We shipped some coast lumber into Ne-

braska when we were selling our own there, and got more for the coast stuff than we did for our own, in dimensions. Our produce largely consists of coarse, common lumber. I refer to the northern, western and northeastern parts of Nebraska. None of us attempted to reach those markets with common lumber, except in the case of the coast, and their product is larger and longer than ours. Those cars that are sold in Illinois in 1907 were largely factory planks with a little finish, but not much. That I sold in Wisconsin was almost entirely the same character. We put in this factory plank plant about a year after we built our mills. We found that we had to do something to get rid of this common coarse product, and so we put in the factory plank plant, and we had to throw away one-third of it and could not sell the rest. That amounts to about 20 per cent. of our cut, one-half of which is very, very coarse and common, and the other is on a par with the average of our product. We never were able to compete with the coast when the coast chose to move their product into territory we were seeking. We never could do it and we never can do it. I mean the territory we were both seeking as the market for our product. The coast can undersell us and get rich. They can sell at a price that would close our mills, and they would get rich.

(The witness was then asked whether it was his contention that his product is so much inferior to that of the coast that this rate ought to be made so low as to equalize the inferiority of the lumber in order that he could compete with the coast, and he testified):

There are three districts we can move our product to. One is North Dakota, one South Dakota, and the other Nebraska. Our competition in those districts is the South, insofar as they have the same general character of product, and they have a good deal of the same general character, when they do not cut it into big construction material, or export material. To those three districts they have approximately the same mileage, and a very much less rate. Then our other competitor is the Coast. Almost the same conditions apply there. Both of these districts get an average in the neighborhood of two dollars or more for their product, if intelligently manufactured, than our district does. Granted the same degree of intelligence, the same kind of material and the same market conditions prevailing, the Coast gets a couple of dollars more a thousand out of it than we get at the best, and that two dollars puts out of the business, when the Coast chooses to get into it. When they have got a lot of foreign business

and a lot of big timber business, they don't pay any attention to us; but when they have not they cut their stuff up small and we take what they will permit us to take. It is true that market conditions are poor at this time; but the same general conditions exist with everybody, and those fellows can meet them while we cannot. The Coast stumpage and all southern stumpage is greater by two dollars than the market value of the stumpage from Spokane east to the top of the Rocky Mountains. There are three districts in which the lumber is manufactured today and in which it is going to be manufactured. One is the south, which has this big eastern belt. The other is the Coast, which has the standing timber in the world today, west of the Cascade Mountains; and the other is this territory, we speak of as the Spokane-Montana district, from the top of the Rocky Mountains to the city of Spokane. It embraces all different classes of timber. It is poor and small, and yet it is timber which, when cut up, is used for small construction and cannot be used for the special stuff which both of the other districts supply. It has an average manufactured value of two dollars a thousand less than the average Coast lumber and more than two dollars less than the average southern lumber. Do the very best we can, we cannot begin to compete with the Coast in cost of manufacture. Our trees are small, and it costs just as much to handle a log with a hundred feet in it as it does to handle a log with three hundred feet. Our logs average a hundred feet, while the Coast logs perhaps would be a thousand feet, and it costs us two or three times as much to log our stuff as it does the Coast. Those people have such thick stands of timber and such big trees that they can log on a large scale, and naturally can do it cheaper than we can. Our little company has good men connected with it, and we have got money enough to build a railroad into our timber; but we have no way to get our money back, if we build one. We are hauling logs for miles on sleds for use today, as they did in primeval days. Ours is not a railroad country. It will always cost us more. From the very nature of our timber, from the mill to the cars, we have got to manufacture it into all of the forms that enter into an expense account. The Coast people not only produce big timber, but they take it out of the water, run it through the saw mill and dump it on the cars with machinery, at a minimum of cost. Our stuff has all got to be cut up into small sizes, and there is a large expense attached to it. The manufacturing cost is greater and the selling price is less, at least two dollars a thousand.

Not grade for grade, but the only way you can figure it is on the average of what you get out of a tree. This Commission cannot enter into what it costs us; but they can enter into what we get out of it, and where we have to go with it. We have asked for a ten cent differential over the Coast.

If our economic conditions and our natural recourses were the same as they are on the coast, we would need the differential that we requested, because our stuff is not worth as much as theirs. Even if we had the same kind of timber that they have and the same cost of manufacture, and everything of that kind, we would still need the differential because we cannot market our product as the Coast and the South do, because they have the world for a market. The Booth-Kelly Company, for instance, have got California, which is the highest priced market. It is not my contention that by reason of our situation a special market should be preserved to us to equalize us with people to whom nature has extended greater advantages.

Our mill is one of the best of the smaller places in the Inland Empire. There are two or three very large mills further west, but ours is not in that class. We can perhaps manufacture as cheaply, and can ship at as good an average price as the best of the mills. I presume that what we get for our stuff would be about the average. We are said to market our product to better advantage than most of our neighbors. The capacity of our mill is in the neighborhood of fifty thousand feet for ten hours.

There are about four hundred mills in the Inland Empire territory. I keep speaking of the Inland Empire, but when I do I do not mean the Spokane district alone. I think of all our general manufacturing district.

Our Association compiles records taking in Montana the mills owned by the Amalgamated Copper Company and by the Great Northern interests in the northern part of Montana. Their product is fairly representative of what our product is, and we have got to know how much they produce and where their market is, so to know what to do with ours. When I say there are four hundred mills in the Spokane district, I mean in that whole territory.

Of those four hundred mills, one-half of them are not big enough to hurt. We get reports, if I remember correctly, in the Association, from about 175 mills. Those are representative mills, owned by people big enough to understand the question and to make an intelligent answer, and those are people representing the largest portion of our cut.

There are a lot of mills in our district that produce thirty thousand a day; some that produce twenty thousand a day; and some that produce three hundred and fifty thousand. There is one isolated case that has that capacity, but they don't run every day, and they don't run nights. Some of them run all the time and all of them try to run a part of the time. When you speak of actual production as distinguished from capacity, that is another story. It is what they do, and not what they could do. We happen to run more than some of our neighbors. The average capacity of the 175 mills which go to make up our report of a total production in the neighborhood of a billion and a quarter feet in the whole district would not be far from 3,500 an hour, or 35,000 a day of ten hours.

I think our timber is about a fair average of the timber tributary to the other lines which lie within seventy miles of Spokane. Our records show that the total district has about ten per cent. of white pine, and our own mill does not have quite as much white pine as that—not over five per cent.

The reasons which induced me to locate in that district, instead of on the coast, were these: I was in the banking and brokerage business and I loaned a fellow that had a saw mill some money. I had to take the saw mill, and I have it yet. I loaned him six thousand dollars, and most of our crowd have been trying to get that six thousand dollars back, and we have so far failed. We have put six hundred thousand dollars on top of it to get the first six thousand back, and there is not much show to do it. We were really trapped into it. I loaned that money, and then we bought some timber land and a little mill and tried to get the money back. Then we bought more, and then I saw there was no chance to get out without building a little larger mill, and I tried that. Then the Northern Pacific Railroad had a lot of timber in that district, and they thought it was a good time to get rid of it. I helped them to sell two hundred thousand acres of it, and bought sixty thousand acres from them and got some other people interested. I want to say to you, although I have gotten into it so deeply, it would be better judgment to get out, and I would if I didn't hope for better conditions. We went to the Great Northern people some years ago and told them our case, and they did the best they could for us. But they said, when this new tariff was issued, they had to put us into another class. I don't know why they put us into another class; they did not tell me that. They said they had to take me out of the fav-

ored territory, and that I would have to look at it from a broader standpoint. I told them that I would take my chances with the other fellow.

We do our logging on the snow in the winter, but we have to log on wheels to same extent.

Further Cross-Examination (Rec., P. 273).

I cannot tell you how much it cost us per thousand feet to make lumber. I said that the average Pacific Coast stuff was worth two dollars more than ours. I did not say the lumber was worth two dollars a thousand more. I ventured to say that it cost two dollars a thousand more in our district than it did on the Coast. There are a whole lot of things that enter into cost. And there are hardly any two men who will answer that question alike. It is a matter of book-keeping. I can go into the details of cost, but other men would have to go into exactly the same details in order to make an honest comparison. The cost of the Spokane Lumber Company during the year of 1907 for taking the lumber from the trees and putting it into money, not including any interest charge whatever on the money used, because that varies with everybody, and not including any depreciation to our plant, because we do not have anything left to depreciate, when I was there was $14.60, excluding stumpage.

I spoke of the Inland Empire in the way that lumber men speak of it. Perhaps the better term for it would be the Rocky Mountain district, from the top of the Rocky Mountains west to Spokane. You may stop there. We do not go much farther west than that. There is not much west of Spokane, not much timber. There is an area of two hundred miles of wheat fields. The district to the south through eastern Oregon and north to the British line. We do not go south to the California line, we stop at the northeastern corner of eastern Oregon. I think of it as the northwestern corner of eastern Oregon, not very far west.

I was president of the Western Pine Manufacturers Association last year.

(The attention of the witness was then called to a copy of the constitution of that Association and he testified):

That is the one we worked under and it has here a description of the Inland Empire, but we started that with a small nucleus of men and we were trying to take in all that district that we could and to get other members in, and we offered

every inducement we could to get people who were manufacturing lumber interested in it.

(The witness then read the following from the constitution):

"The name of this organization shall be the Western Pine Manufacturers' Association. Its object shall be to further the interests of the lumber producers and shippers on the Inland Empire. That is the district bounded on the north by British Columbia, on the east by the Rocky Mountains (that means the top of the Rocky Mountains), on the south by California, Nevada and Idaho (and, as a matter of real fact that is not a lumber producing district, except the northeastern corner of Oregon), and on the west by the Cascades." As a matter of fact, there is no timber to talk about between Spokane and the Columbia river. Two of our members, as I stated, have a little pine on the east slope of the Cascades, and so we took those fellows in.

I will tell you again. The Inland Empire, as we think of it and speak of it, regardless of technicalities, is the territory from the top of the Rocky Mountains south to and including the northeastern corner of Oregon. Now, there might be little extensions and districts that would reach beyond that in isolated cases. But the same general territory I have mentioned embraces the lumber produced in the territory I have been talking about. The same general character of lumber goes to other people. The Amalgamated Copper Company has large interests in the lumber business in that district, and produces small timber for their mining interests in the State of Montana. The rest of their lumber is largely and very intelligently marketed locally in the very prosperous state of Montana. The Great Northern milling interests, which are in the northern part of the state of Montana, were started to produce a smaller character of material, such as could be produced from that kind of material for railroad use—ties, and things of that kind.

I told you that we had two members of our Association at Yakima. Our timber does not extend from Spokane to Yakima. They got a little factory plank that goes into Wisconsin, the same as ours does, and the rest of their timber is mostly sold locally. Our timber does not extend from Spokane down to the eastern corner of Oregon. The Walla Walla wheat fields come in there. There is a big wheat field in the southeastern part of the State of Washington, and there is a large timber area in northern Idaho. Northern

Idaho is pretty nearly all timber. The most of the acerage in the eastern part of the state of Washington east of the Columbia river is agricultural and does not have much timber.

(Thereupon the witness marked the map with blue pencil, indicating the Spokane timber district. Continuing his testimony he stated):

That covers the timber section of Washington. With some exceptions it is generally true that directly west of the blue line on the Washington map is wheat, until you come to the foothills of the Cascade Mountains. I would have to post up a little about that, but generally speaking, the top of the Rocky Mountains takes in the timber district. There is a little timber just east of the Rocky Mountains, but not to speak of. We compete with the Big Black Foot Company's mills. They have the same general class of timber that we have. They are located at Bonner, which is right close to Idaho, and at Hamilton, Montana, which is right close to the Idaho line. Their headquarters is at Missoula. The president of the company lives at Missoula.

The timber practically goes to the top of the Rocky Mountains. In Oregon it is in Union, Wallowa and Baker counties. It does not extend all over that whole territory. Just along the side of the Blue Mountains. The timber grows only on the Blue Mountains, and the rest is wheat. Union is largely a wheat county. The timber that has been exploited is largely in the Blue Mountains and Powder River Mountains in three counties of northeastern Oregon. The timber that is purchased for Boise, Idaho, is shipped by the Oregon Short Line, but most of that is used locally, except on a very few specialties.

The Short Line runs through a sage brush country in which there is no timber at all accessible to the line. That is pretty generally true except from Boise, Idaho. They have to log that down the river in order to bring it to Boise, but it comes down without much trouble. At Boise there is one of the modern mills.

I could not tell you how much they sell out of that country, they sell quite a good deal. I don't know how many feet. I am not absolutely certain about my statement. I do know that they sell their factory plank, and anything that can be cut into that character of stuff they market in the same territory that we do. They have got such an excellent market at Boise in that wealthy central Idaho country, that they would

be foolish to attempt to market their product away from home.

For quite a distance west of the Blue Mountains it is a sage brush country and an agricultural district. The big timber country of Oregon is west of the central portion of the state. There is quite a timber district in the state of Oregon in almost the central part of the state, that has no railroads and is inaccessible at this time, but finally, as we know, it will find transportation to San Francisco. Perhaps I am mistaken about the central part of the state, but north of the center. What I am thinking about is timber from the Deschuttes River, west of the Cascades. The central part of the state of Oregon, north to the state of Washington and all that district from the foot of the Cascades to the northeastern corner, is generally spoken of as an agricultural country. There is a treeless country there, I think.

(The maps referred to were thereupon offered in evidence by the defendants, page 286, and marked "Ufford Exhibits Nos. 3-6.)

Some of the lumber they produce at Bonner is of the same quality as that of Yakima. They produce the same kind of lumber at Bonner as they do at our place, but there is more fir in the Yakima timber than there is in ours. That fir is a very much poorer quality than that on the western slope. They sell it for home use in Yakima to go into boxes. They have large box factories.

Eliminating the Yakima and Leavenworth stuff, all of the rest, the Bonner and ours, and the Wallowa County stuff is all of the same general character. I don't think they have any white pine down in Baker, Wallowa and Union Counties. They have a larger percentage of western pine and a less percentage of mixed woods than we do. The pine that they have as compared with the total cut could be larger than ours. I don't know how many mills there are from Yakima to Boise. I think the George Palmer Lumber Company does business at LaGrand, Michigan (?). The Grand Ronde Lumber Company is in the same territory. The Shockley & McMurray Lumber Company, Goodenow Mercantile & Stock Company, the Western & Oregon Lumber Company, and the Empire Lumber Company are all in the same general territory. The Summerville Lumber Company is a new name to me; I do not remember it.

I think the freight rates from the Baker City territory to the east generally are about five cents less than ours, to the

Nebraska territory, though they did not go into the B. M. & R. district. They get into Nebraska by the Union Pacific. They have a rate which I think is five cents less than ours to the same territory. It was five cents under the old rate. I think under the new rate it is seven cents less than ours.

All of this Union and Baker county territory in Oregon enjoys either a five or seven cent less rate to the east and the Nebraska territory than we do. I think it is still higher to the Chicago territory. There is a still greater differential.

The Bonner rates are included in what has been termed the Montana and Oregon rates, which are from five to seven cents less than ours in the same general territory for the same class of stuff. We only had that better rate in the eastern part of North Dakota. We had no better rate than anybody else into Nebraska. We had the same rate into the state of Nebraska generally by the Union Pacific and by the B. M. & R. Road, via Spokane as all the other mills in the Spokane district. We attempt to compete with Bonner when Bonner has a seven cent differential over us. We can compete, and there is a reason why we can. The reason is that Bonner has a most excellent home market in which they are able to get rid of most of their stuff. When they get outside of that home market, into the Nebraska territory generally, they do it in a most intelligent way. They know how to get a good price for their stuff. While we may not get as much at our home mills as they do, we are not hurt so badly by them as we would be by less intelligent marketers.

I don't think that the Bonner differential of seven cents less than ours is fair. I certain do not, but I do not think it hurts from some people as much as it would from others.

I have said that the timber on the eastern slope of the Cascade Mountains, where these little mills operate is largely owned by two concerns, one at Leavenworth and the other at Yakima, and most of their product is used locally. I don't know how much timber those two concerns own.

There is not so much timber on the eastern slope of the Cascade Mountains. I do not mean to say that the eastern slope is a treeless country, but it is not timbered to the extent that ours is. The Deschuttes River Company is the principal mill in that country. There is no railroad in there, and there is nobody to make a complaint either way. He is talking of the Deschuttes River country.

Take the whole eastern slope of the Cascade Mountains, I don't mean to say there is no timber there, but it is not tim-

bered to the extent that the western slope is. I said that our country was not timbered to the extent that the western slope is. The timber on the eastern slope is nearly of the same general class as exists on the western slope.

The timber of the Hood River territory is more nearly like the timber that exists on the eastern slope of the Cascade Mountains. When you get that far and farther you are getting toward the clear pine belt. The eastern slope of the Cascade Mountains is not nearly the wooded and timbered country to the extent that the western slope is, but it is of the same general character of timber as the western slope.

I have been speaking for the district in the Inland Empire lumber manufacturing district, where we manufacture our product in the same general territory. They do not market their product in the same general territory as we do, and are not so interested in what the rate is. The people there use their timber at home and make it into fruit boxes. The mills there are not so small, they own quite a big chunk of timber in that country. They have had a differential in their favor, and we have not, and the Spokane district has none except in Nebraska. They have it in Nebraska.

I think, as a matter of real fact, that the territory I have been talking about, which manufactures the same general class of product which must be marketed outside in competition with the South and with the cheaper class of product from the extreme Coast, ought to have a different rate than the Coast.

I would have the boundary take in all the mills, generally speaking, in the Spokane district. That would have to be gone into by the traffic managers. Generally speaking, I would say to take in the territory from the top of the Rocky Mountains to Spokane, north to the British line, and south to take in the Baker City country, which you speak of; all of which lumber must be marketed in the same general territory, at the same general cost, and which is of the same general character. I would put the Baker City territory and from Spokane east to the top of the Rocky Mountains and Boise, Idaho, and north to the British line, in one differential class.

Yakima, Hood River and the eastern slope of the Cascade Mountains, are three hundred miles farther west than we are, and every one of them has got a home market. They all have a good local market and they can pay a higher freight rate than we can. The distances would warrant it. I do not think that enters into it very much—but their product also would warrant it.

Cross-Examination (By Intervenor).

I have lived in eastern Oregon and eastern Washington eighteen years. I have been up in Okanogan County, I have been in Gilliam County and in Douglas County. I have generally been through there, but it has been several years ago. There is an agricultural belt through there, and while there is a little timber in each one of these places there is not a mill in the district. I have not examined the report of the Government Forestry service as to the amount of timber that is in Okanogan County, but I have been all through that country and know which way the slope works and where the stuff has got to go. The timber in that region may be considered as largely of the same general character as ours. I don't know that there are a great many hundreds of millions of feet there. I would not dispute the Government report, if it says that. They have got an immense market there when they might get it opened up.

In Chelan the timber is of the same general character as the Leavenworth timber. Leavenworth is on the line of the Great Northern Railroad west of Wenatchee, on the east slope of the Cascade Mountains. It is almost an inaccessible region, regardless of what it may be. I would not say that the Government report is a mistake if it states that there are hundreds of millions of feet and billions of feet of standing timber there. I said it was an almost inaccessible region, regardless of what kind of timber it was. It is inaccessible to get it out by the lake if you cut it. I have been in that country. It is a timber country, mountainous and rough, an awful country, a beautiful country. The Kititas is a better country, the western part of it is timbered, but not to the extent that the western slope of the Cascades is. In the extreme western part of the country it is a heavier timbered country than Stevens County. The timber is mostly fir, more fir than anything else. I did not say it was a treeless country. I said that in the extreme western part of the county there is a lot of timber and that it is mostly fir.

I would not presume to put my judgment against the Government report, if it says that it is mostly pine.

Klickitat is largely a farming country, a beautiful farming country with a wonderful home market. There is timber in there.

I cannot tell you how many feet of timber I own. I own about thirty or forty thousand acres. I would call an ownership by one man of 350,000,000 feet of timber a particular

amount. I do not know the Klickitat Pine Lumber Company or that they own over 350,000,000 feet of pine lumber. I don't know where they are doing business or how they market their product. They could market a whole lot of it within two hundred miles of home.

We marketed last year, according to our report, over 50 per cent. of our product locally. We did not say in our report that it was a fact that this coming year was going to be such a wonderful year in production that the local demand was going to keep up with the consumption.

There are some very large mills in the Hood River country. I do not know where they market their product. They have fir and western pine. I guess they have a little clear pine. There is a little down here in southern Oregon.

This Hood River district product was not recognized by the manufacturers as the same lumber as they shipped from the Spokane district. It was not so if it was so recognized. I am willing to say that I do not know what the tariff was between these places, although I have a general knowledge of it there.

From Spokane, under the old tariff, we had a five cent differential into Missouri River country points.

Most certainly I do think that the section that differential ought to apply to is up here in Stevens County, this little piece down here, and this little piece down here (indicating), in Northwestern Oregon, irrespective of any of this other territory.

Shaw & Borden's list of prices is not a recognized list among us lumber manufacturers to fix a standard of prices. We just use it to tell the difference in value between the different grades of stock, as a basis to gauge from.

There are no joists, scantling and timber that comes in under that heading selling at all now in our district at any price. I answered that last year or any time when there is any moving, that that product sells at our mills from 50 cents to $1.00 lower than it does at the Coast mills. If we sold that same thing at the mill we would get from 50 cents to $1.00 less than the Coast man at the mills. Approximately the same thing would apply everywhere. I am absolutely sure of this as a general proposition. If we sell it delivered and if we sell it at the mill, there is the difference of the freight; we have got to pay the freight. We have got to meet the price of the other man and take what he will give us. We get from 50 cents to $1.00 less after we have paid the freight.

The same general thing would be true of common boards.

We have got some common boards, but very few of them, that bring a high price. It is all answered in the same general way, that we get less, as a whole, for our product in that territory that we have been talking about than the Coast does in their territory. We do not, as a matter of fact get more for our common boards than the Coast mills do for the same character of product. I do not think we get as much.

I think on ship lap for D. & M. we could get just about the same price. There is some of our product on which we get more than the Coast does, but we do not have but little of it. We do not get as much for rough fencing as the Coast does. The items I have gone over constitute the largest part by far of our products.

What I said was that for the same thing, we would get from 50 cents to $1.00 less on a thousand feet in the market, grade for grade, than the Coast receives. For the whole thing, it will be from two to two and a half less

There is a farming country around Spokane. We raise wheat, vegetables, fruits, cattle. From the Coast comes canned goods. We are on the eastern edge of this farming country. It is nearly south and west of us. There is not so much wheat fields near by Spokane. The big wheat area is west and south of us. It extends from 175 miles to 200 miles. Leaving Spokane we first get into wheat in about twenty-five miles. We have a lot of big flour mills in Spokane. They ship wheat there, but not so much as they do to the coast.

Re-direct Examination.

There is no railroad transportation north of the Great Northern Railroad crossing the northern part of the state of Washington, other than the Spokane Falls & Northern, and its branches.

The real value of stumpage depends upon the accessability, or non-accessability of the timber at a given time and upon its proximity to water or rail. There is a considerable territory of timber on what is known as the Payette River in southern Idaho, which will be transported over the O. R. & N., and the Oregon Short Line. There is an immense lot of timber that has to go to the Union Pacific.

The mill at Boise is one of the good ones and one of the large ones. I don't remember just the capacity.

The reason we can compete in wide boards with the Minnesota market is because they don't have any, and I caught a

man who wanted some badly. The mill I speak of is the Potlatch mill. It has a capacity of 35,000 feet an hour. That is the maximum, you know. It was built three years ago. The first mill in the district was built only about five years ago. There has been a more rapid growth and development of the whole country than in eastern Oregon, within three years, but there has been a rapid increase there, and there is a reason for it.

Counsel for complainants thereupon offered certain bills of lading, showing weights of lumber from Idaho to Washington points, where were marked "Exhibit Ufford No. 8." (Record, page 313.)

Also further bills of lading marked "Exhibit Ufford No. 9." (Record, page 314.)

Also other bills of lading marked "Exhibit Ufford No. 10." (Record, page 314.)

Also certain statements of the Potlatch Lumber Company, showing total shipments made by them, by feet and weight, marked "Exhibit Ufford No. 11." (Record, page 315.)

Also statement from the Palouse Mill, marked "Exhibit Ufford No. 12." (Record, page 316.)

Counsel for the complainants thereupon offered certain exhibits from the McGoldrick Lumber Company, showing freight shipments into North Dakota, weights per car, amounts of old rate, and new rate, and distances those shipments actually went. These statements were thereupon marked "Exhibit McGoldrick No. 1." (Record, page 322.)

Counsel for complainants thereupon offered exhibit in regard to Humbird Lumber Company, showing shipments in North Dakota, South Dakota, Nebraska, and also shipments east of the Minnesota transfer. That was marked "Exhibit McGoldrick No. 2." (Record, page 323.)

EVIDENCE FOR DEFENDANTS.

W. G. JOHNSON, for defendants, testified (Record, page 324):

I am Assistant Comptroller of the Northern Pacific Railway Company.

JOHNSON EXHIBIT "A"

NORTHERN PACIFIC RAILWAY COMPANY.

STATEMENT SHOWING TONS, TON MILES AND NORTHERN PACIFIC REVENUE ON LUMBER AND SHINGLE SHIPMENTS FROM OREGON AND WASHINGTON TO POINTS NAMED, FOR YEAR ENDING JUNE 30, 1906.

	Tons	Ton Miles	N. P. Revenue	Rate per ton mile in cents
To points via Billings	388,994	393,496,799	$1,911,615.66	0.486
To points in Eastern Montana, Dakota, and beyond, and to points in Minnesota	156,482	251,172,339	1,257,078.77	0.500
To T. C. Terminals, Duluth and points beyond	572,245	1,120,426,859	4,889,845.52	0.436
Total	1,117,721	1,765,095,997	$8,058,539.95	0.457

Office of Auditor Freight Receipts St. Paul, Minn., Feb. 19, 1908.

This statement (referring to "Johnson Exhibit A" introduced and received in evidence. Potlatch record, page 325) shows the number of tons moved; tons one mile, and Northern Pacific revenue—the average rate per ton per mile—on shipments of lumber and shingles from Oregon and Washington points, for the fiscal year ended June 30, 1906, divided into three pieces: To points via Billings, on which the average rate per ton mile was 4.86 mills; to points in eastern Montana, Dakota and beyond and to points in Minnesota, comprising principally the shipments to local points on the Northern Pacific, on which the company received an average of 5 mills per ton mile; and business passing through Twin City terminals, Duluth and points beyond, on which the company received an average of 4.36 mills per ton mile. That statement was prepared under my direction, and is correct so far as I know.

Cross-Examination.

I do not include the shipments from Idaho and Montana. These are shipments from Washington and Oregon, under tariffs involved in the Pacific Coast case, principally of coast lumber. If the average haul of lumber from Idaho, in and around Spokane, was not to exceed 1,200 miles, and the rate was the old rate, we would naturally get a higher rate per ton per mile, somewhat higher. For a distance of 1,200 miles on a 40 cent rate, it would figure 6-2/3 mills per ton per mile.

Our auditor of freight receipts prepared a statement which included everything east of the apex of the Cascade mountains. This statement, Exhibit A, was also prepared in the office of the auditor of freight receipts. This statement was prepared February 19, 1908. It was an enlargement of the statement furnished for the other case.

D. H. McMULLEN, for defendants, testified (Record, page 331):

I am a wholesale lumberman and live at Minneapolis. I have lived there off and on since 1895. I have never been in any other business since I was ten years old than the lumber business. I was brought up on the Saginaw river in Michigan, where my father was a lumberman. I remained there until I was 22 or 23 years old. The lumber industry was of a very extensive character in that section, white pine and Norway.

Then I went to Marinette, Wisconsin, and stayed there eight years. White pine and Norway was the character of the lumber manufactured there. During that time I went to Texas, practically a year, investing in southern timber lands on behalf of others. They were Hon. Isaac Stephenson, now United States Senator from Wisconsin, ex-Senator Sawyer, now dead, a man named Speese, a rich lumberman, and a whole crowd of those people. They invested $70,000 or $80,000; and bought up the land so fast that Congress withdrew the lands from the market. The buying was fast at $1.25 an acre. The timber bought there was short and long leaf yellow pine. These investifiations and purchases were in Texas and Louisiana. The long leaf pine is a little softer wood. By looking at it, it is hard to tell the difference. The bark of the two looks alike, but with the long leaf the needles are longer. The short leaf makes the better flooring, inside finish, and is a little harder.

These purchases in Louisiana and Texas were made on my report. Shortly after that I had to close up a big estate in northern Michigan, and then I went to the Pacific Coast. I went into the lumber business there, with a partner. We ran a lumber mill until the panic of 1893, when lumber dropped so low in price we had to quit. I then went to work for the Atlas Lumber & Shingle Company, of Seattle, and represented them in the east, selling lumber. That, I understand, is one of the parties to the Pacific Coast case, the Pacific Coast Lumber Manufacturers' Association. I worked for them five years as salesman, and sales manager in the United States. They manufacture principally fir. Then the St. Paul & Tacoma Lumber Company hired me. That company is located at Tacoma, Washington, Everett G. Griggs is now president of it. He is President of the Pacific Coast Lumber Manufacturers' Association. That mill produces more than any other mill in the State of Washington. I was assistant to the second vice-president, who was general manager. I was assistant general manager, and had charge of everything under Mr. Griggs. In some cases we bought logs. I superintended the logging operations and directed the sales of the manufactured product in the United States and foreign. I was with that concern five years, acting in the capacity of assistant to the second vice-president, two years. I then left and went into business for myself at Minneapolis. That is a wholesale and commission business, representing four large mills. I have been in Minneapolis more or less for 12 years, since 1895. About eight or ten years ago I traveled in the so-called Spo-

kane district, all over that territory, selling lumber, after I had been in the same territory investigating the resources for pine, looking over some tracts with a view to purchasing. I do not remember how many times during those years I have been there. When I was with the St. Paul and Tacoma Lumber Company, they had retail yards in Washington, and bought some of this Washington pine. Those purchases were made under my direction.

Since I have been in Minneapolis in the wholesale and brokerage lumber business, I have sold fir, all Pacific Coast products and eastern Washington products. Since the first of the year I commenced to represent a concern in St. Louis and I have dealt in yellow pine. One day last year I took a 183-car order for coast fir and eastern Washington pine. At another time I took an order for 107 cars. It has been a pretty big business. I have confined my territory principally to the west, including Wisconsin, Iowa, North and South Dakota, and Minnesota, some Nebraska.

In the general common run of lumber, we have probably 20 per cent. of uppers, and 80 per cent. of common. Common lumber consists of principally dimension, some board, some shiplap, flooring and drop siding. The great majority of fir is used for house building purposes. I hear a great deal of talk about lumber, and there is a misconception by the general public as to what lumber is used for. Take the whole volume of our lumber business, and I think fully 80 per cent. goes into building houses. During the last two years there has been more or less lumber sold to railroads. I know that about ten per cent. of the Pacific Coast lumber goes into Pacific lumber business, which is astonishing when you hear so much talk about the big railroad purchases. We have sold western pine in South Dakota, Minnesota and North Dakota, the common grade of western pine. I do not speak of the upper grades much in western pine, because it is only confusing and amounts to such a little thing, not seven per cent., and I do not take it into account when speaking of western pine in conversation. It is practically common lumber. That lumber is sold principally in North and South Dakota and the western part of Minnesota, the northwestern corner of Minnesota. Eighty per cent. of the manufacturers manufacture the same kind of goods from fir as from western pine. The only difference is in sizes. They make more boards from western pine than from fir. They get more money than they could if they put them into dimensions. Some of our northern

white pine mills do the same thing. The reason why there is more fir manufactured in dimensions than in boards is that they cannot sell their fir boards in competition with any other wood we know of. The fir board is a hard board that splits easy, and is pretty knotty, and carpenters are so prejudiced against it they would walk around the block before walking near one.

The Western pine saws a great deal easier than fir. It is easier for the mill to saw up pine than fir logs. White pine logs can be sawed cheaper than oak logs. Our fir timber is between the two. Our carriages have got to move slower. In feeding our band saws with white pine it goes through like chain lightning, and it takes a cracker-jack to sit on the carriage. The western pine of Washington and Idaho is hardly as hard as the Norway of Minnesota, and it is not quite as soft as the soft pine of Minnesota. The white pine of Washington and Idaho is just about the same as the white pine of Minnesota. We sell coast fir and western pine on the price lists which have been adopted by this association out there. We all use the same price lists. They are prepared by committees appointed for that purpose. The inside of each price list is exactly the same. The only difference in the covers is in the name, depending on the mill or firm that sends it out to the trade. The prices named in these price lists aim to represent the market price of the various kinds of lumber. For the last two years up to December 31st we have made our sales absolutely on each printed price list. We had no authority to cut them, and I sold a great many hundred cars on them. That is true both as to fir and western pine. We used the weights contained in the price lists absolutely to determine the price on any railroad, on request,—in case anybody asks us for the delivery price. I originated those weights on the Pacific Coast, in 1893, I think it was. Those weights are reasonably accurate on both fir and western pine. There is no more variation from the actual weight in one than in the other.

The price list referred to was marked "McMullen Exhibit No. 1," and was offered and received in evidence. (Potlatch Record, page 345.)

That price list represents the current market price on the items described therein and the weights on which lumber of this character was sold up to December 31, 1907. The same is true of Shaw & Borden's current price list which you show me, as regards the items described therein, as it is in respect to the other.

Shaw & Borden's price list was introduced and received in evidence and marked "McMullen Exhibit No. 2." (Potlatch Record, 345.)

Minneapolis is one of the largest wholesale lumber markets in the United States, and probably in the world. All kinds of lumber are sold and bought there. Last year's business, taking the run of standing timber bought on the Pacific Coast, produced about 45 per cent. of dimensions stuff, about 10 per cent. of shiplap, about 15 per cent. of boards, about 20 per cent. of dressed and matched. The way the market was running it was about the most economical way to saw the ordinary run of logs. That adds up 90 per cent. There is a great deal of waste in sawing fir lumber, the band saws run so fast as to make a great deal of thin lumber and wedge-shaped lumber and leave a good deal of cull, so that the remaining ten per cent. would be made up of lumber not fit to ship by rail to any market outside of this vinicity. Of that 90 per cent. it would be about 70 per cent. common. I do not want to have this statement criticised afterwards, so that I want to say that I mean that statement to apply for 100,000,000 feet. I mean the whole locality, the entire state. In the manufacture of white pine, about 20 per cent. of dimension would be manufactured. It does not pay to manufacture western pine in the dimension, because they can get more money for it by putting it into boards. I would estimate about 25 per cent. of shiplap was produced last year on the average from western pine. Shiplap is manufactured from 1 by 8 boards principally, and from 1 by 10 to a large extent. That is, out of 8 or 10 inch stock in width; some 12 and 16, but usually out of 8 inch stock. There is a big demand for it. It is shiplapped on one side so that it fits over and makes a close joint. It is put on the outside of buildings and keeps the wind from going through and is used in building houses of all kinds. It is the old weather boarding. About 25 per cent. dressed and matched would ordinarily be manufactured out of western pine. That adds up 95 per cent. The rest I should judge to be cull, and also might include the waste we have. There is not so much cull in western pine as in fir, because we use the lower grades for different purposes. I agree with the statement made here yesterday that substantially 93 per cent. of western pine is common and about 7 per cent. upper.

In the ordinary manufacture and sale of fir, we would classify it as common. We do not segregate it into one, two and three common, but just sell it as common. We make only one grade

of shiplap, and only one grade of boards. Dressed and matched are divided into several grades. That runs into clear lumber; that is, with the fir, dressed and matched is clear lumber. The dressed and matched of the Minnesota people may be common. Of this 20 per cent. of dressed and matched which is manufactured from fir, it would be about an equal share of each grade. There are three grades, one, two, and three. Taking the western pine, they make a number two grade of dimension stuff. Year before last when times were good, we often shoved No. 2 dimension into No. 1 orders. We do not grade it close in practice. Shiplap manufactured from western pine would be divided into grades, No. 1, 2 and 3. I think they would run pretty nearly equal. There are Nos. 1, 2 and 3 grade of boards manufactured. That covers, I should say, practically 90 per cent. of the business. They do have Nos. 4 and 5, but No. 5 is dead cull, and No. 4 just live cull. When they get below No. 3 grade, it is not of much use; so that the ordinary run of timber would about equal in proportion, the No. 1, 2 and 3. Our matched and dressed from western pine would be divided in just about the same way.

Taking these percentages and these prices, the statement (McMullen Exhibit No. 3, Record page 353) fairly represents the result upon the prices shown by these price lists, showing that 1000 feet of fir delivered at Minneapolis, at the 50 cent rate, would be equivalent to $14.02 at the mill. The statement also shows that western pine delivered at Minneapolis at the 45 cent rate, taking the prices shown in these price lists, and the weights shown in these price lists, would net $19.56 at the mill. I think that fairly represents the result on these prices. That gives an advantage of $5.54 in favor of the western pine and nets us that much more than does our fir.

The statement referred to, being marked "McMullen Exhibit No. 3," is as follows (Potlatch Record, pages 353 and 354):

COMPARATIVE VALUE OF FIR AND WESTERN PINE.

Fir (delivered Mpls. at 50c cwt.).

Dimension.					Ave. Wgt.
2″ x 4″ 16 feet	45% Val.	$26.50	wgt. 2600	$11.92	1170
Ship Lap	10% Val.	27.00	wgt. 2500	2.70	250
Boards	15% Val.	27.50	wgt. 2500	4.13	375
Dressed and matched	20% Val.	31.25	wgt. 2000	6.25	400
	90% of Log			$25.00	2195 or 90%
	10% of Cull			10.98	50c. rate
				$14.02	$10.98 F. O. B. Mill.

Pine (delivered Minneapolis at 45c. cwt.)

Dimension.					Wgt.
2″ x 4″ x 16″	20%	$25.75	wgt. 2000	$ 5.15	400
Ship Laps	25%	29.25	1800	7.44	450
Boards	25%	29.75	2000	7.44	500
D. & M.	25%	30.50	1800	7.63	450
	95% of Log			$27.66	1800 or 95%
	5% Cull			8.10	45c.
				$19.56	$ 8.10

RECAPITULATION.

Fir, F. O. B. Mill	$14.02	Average weight	2439
Pine, F. O. B. Mill	19.56	Average weight	1895
	$ 5.54		544

1 Car of 25,000 ft. would be $138.50

25,000 ft. Car	
Pine at 1892 lbs.	47,300 lbs.
Fir at 2439 lbs.	60,975 lbs.

On another 5c differential Spokane would get 90c per thousand or $22.50 per car or $161.00 Per Car 2500 ft. more than 2500 car at cost.

Under old 40c basis from both, pine got $116 more.

I have checked up these weights recently with expense bills of freight shipments. They confirm the statement that the weights and price lists are relatively correct. During the last year there was no variation from these price lists. At the present time both the coast people, the fir people from the Pacific Coast, and the western pine people, are giving the same discount from these sheets, so that there is no relative difference as to the actual net amount at the mills.

Western white pine from the Spokane district goes anywhere if their freight rate is not too high. Of course they have to be governed by the prices made by Wisconsin and Minnesota on white pine. They cannot get any more money than that, but they go into the same territory. There are certain parts of the Inland Empire that have a great deal of white pine in them. For instance, the Potlatch purchase. That is south of Spokane. The timber commences south of Spokane about 70 miles, and then it extends in an easterly direction from that. There is a big chunk of it. The first edge of it you come to is not as good timber as it is further back into it. When you get back in it, it is the finest body of timber in Idaho, consisting of a great deal more white pine than has been shown by the evidence put in here. I should think 50 per cent. of the tract is white pine. The Musser Company does not cut any white pine at Spokane. It is practically all western pine.

Cross-Examination.

I am not interested in any timber lands anywhere. My examination of timber land has been entirely for other people. It was in 1889 that I went down into Texas and Louisiana to look over this timber land. I cruised that timber then. We invested about $70,000 to $80,000 at $1.25 an acre. We made a very careful estimate of it before we decided to take it at $1.25. We bought it in solid bodies. We bought it for A. C. Brown, of Marinette, Wisconsin, who was at that time the chief mover in this enterprise, Hon. Isaac Stephenson, and others who were interested. They manufactured no timber down there. It is still there. I am not sure but what the Brown boys started a mill two or three years ago.

I personally cruised that with the men I took down there with me. I absolutely did the cruising. These other men looked after the camp and cooked for me and so on. We were not looking for the best timber in the country. We were looking for an investment. Mr. Brown was looking for

something and hired me to estimate that timber for him. I knew of the Pacific Coast timber at that time and of the Idaho and eastern Washington timber. I went to the coast first in March, 1890, for myself, for the purpose of starting up in that country in the lumber business, in some manner or other, and also for the purpose of investing in some mines in Washington. When I went there in March, 1890, I did not stop off at Spokane and cruise this Idaho territory. I had no reason for doing so. I knew the general character of timber there, as men in that business find out about it. It did not look as good to me as the coast then, on account of the market at that time. There was no market for it at all. They were not shipping fir lumber this way at that time. There were 12 old mills on the coast, that had been there for thirty years, shipping foreign and down the coast. I went to Seattle and a friend of mine got me interested in renting a saw mill from some other parties, within four miles of Seattle. We operated that mill possibly six or eight months. We had to let it go because we could not make any money out of it. The market fell down, and we had to let it go back to the people we rented it from. We gave up the business. There was nothing in it. I bought no timber for myself, nor for anyone else. After I gave the business up I did nothing for a while. At the same time I owned a little electric light plant in a little town, and after I got cleaned out of that nicely, I entered the employ of the Atlas Lumber & Shingles Company. That was located on the Northern Pacific. The head office was at Seattle; the mills about 68 miles up the line, along between Seattle and Dayton. I remained in the employ of that company five years, selling lumber. I had charge of the selling only. I bought no timber for them. I was not a millionaire, to be able to enter into timber investments. I was looking for something easy. Timber investments were not attractive to anyone at that time, because yould not make any money out of the lumber business, because you could not sell lumber for any money if you cut it. You had no place to move it, no market. All I did was to sell lumber after I entered the employ of the Atlas people. That was all I did in connection with the business of that company. That did not take me into the woods to see their timber or logging, or anything of that kind. I was, however, the only practical lumberman attached to the concern, and the owners took me into the woods and asked me questions, asked for advice in all their operations, because there were none of them familiar with it.

When I went with them it was a bankrupt concern, and had about seven million feet of dimension. A fellow went in and cut, and had no sale or market for it. They wanted me to go down to San Francisco to try to sell it. I told them there was no use going down there; that I could do better east, and I did so. This lumber was fir and dimension. There is no southern yellow pine on the coast from the top of the Rocky mountains to the Pacific, no pine at all from the Cascade mountains to the Pacific. Once in a while there is a pine tree. We have them on exhibition. I think I know the character of the timber in the coast territory pretty well. Trees grow very high on the Pacific slope, I should say three hundred feet high; and I have seen them 12 feet in diameter. The average would be four feet. A good quarter section over on the Pacific Coast ought to average 50,000 feet to the acre, that is with the best and biggest timber in the State of Washington. There are not a great many sections that contain more than a quarter of a million feet to the section. Those trees that grow 300 feet high, would go up 200 feet on some special tree before you struck any limbs, but take the average of the timber and you would strike limbs as quickly as on any timber on earth. I have seen big, white pine so thick you could not walk through without chopping a path. I have no timber on the Pacific Coast myself and no interest in any company that has. After this five years of employment with the Atlas Company, I was hired by the St. Paul and Tacoma Lumber Company. I must have commenced with them in 1900. In the interim between March, 1890, and when I went with the Atlas Company, I was not doing anything, and when I went with the Tacoma Company I was assistant to the general manager. When the acting manager was not there I took his place entirely, and when he was there, I took it also, I guess. I had charge of the sales absolutely. I did not have charge of buying timber. To a certain extent I had charge of the logging. Most of our logging, except one camp, was done through contracts. The plant was located at Tacoma. I remained with that company five years, or thereabouts. When I left the Tacoma Company, I went to Portland, and then back to Minneapolis. I never manufactured in eastern Washington or northern Idaho, never operated a plant there at all of any kind. I think it was in 1902 that I went to look over the territory about Spokane. I went for myself especially at that time to investigate the purchase of timber lands. I did not buy because I did not think it was a good bargain. I have been there since at different

times. I traveled through that territory for the Atlas people. I was in there every month during five years, selling lumber. I established new yards for the Atlas Company in eastern Washington. I sold to yards already established. I established two or three yards for the Tacoma Company, all over eastern Washington. They had quite a lot of lumber yards in there, nine or ten when I left, and they still have, so far as I know.

It was somewhere about 1902 that I went down into this Potlatch territory. A fellow named Murphy, who represents a great deal of money, asked me if I could find anything. He said if I could, he would put up the money and buy. He asked me about this tract over there. I looked it over and I told him I did not consider it worth offering a cent of money for. There was 50 per cent. of white pine on it, but there was no market, and I did not know when we could find a market. There is no market right now to speak of. You cannot sell timber at the price list right now. There is no price in Minneapolis now for anything. You cannot sell anything. The price list at the present time means that my people don't let me cut it. Some are offering to cut it, offering to cut below, but they don't sell anything. My people will not let me cut. They say they are going to hang on until they see we will get our price.

I do not know the percentage of lumber that goes into the construction of boxes. My statement as to what goes into the construction of houses is an estimate. I know the general percentage of most any mill I have been connected with. Eighty per cent. of it about goes into yard stock. Yard stock does not include these large dimension timbers, and when I am talking about eighty per cent. in houses, I am excluding all that special sized stock lumber. White pine clear may have knots in it; white fir cannot have any knots in it. Yellow pine cannot have any knots in it in clear.

The lumber that has been shipped on my orders does not weigh any more than our estimated weights in our book. I represent the William Musser Manufacturing Company, of Spokane. I understand they own some saw mills up there that they ship lumber down to. The Musser Company are large manufacturers of boxes at Muscatine, Iowa, and also at Spokane.

I had very little to do with recent shipments from the Gray's Harbor country by the Musser Company. I merely took care of their shipments. They sent me the bills of lading, and I

had it reshipped. It was shipped east to go into sash and doors. That was spruce. That is about the same weight as the pine. I presume it was kiln dried. We could not ship it green. The only thing they would ship green at all would be heavy dimension. The coast ships nothing green at all, only dimension. Some of them ship short dimensions.

I do not remember how many cars of western pine I sold in 1906 nor in 1907. The proportion of western pine to our whole business was very small. I could not say what percentage. I do not buy western pine from anybody in the west and ship it to Minneapolis, and then ship it from Minneapolis. If I had an order for western pine, I would ship it direct to the place where it was to go. There is nobody else that I buy from besides the Musser Company. The records of the Musser Company would show the amount purchased from them by me in 1906 and 1907.

About 7 per cent. of the western pine is clear. When I refer to dimension stuff, I refer to two by four, two by six, and some two by twelve. Fir is a great deal harder wood than western pine. As to whether it is better or poorer for finish, and whether it brings a better price, it all depends on what it is intended to be used for. If you want to use it for dock timber where it is exposed to the wind and the rain, the best thing to use would be white pine; you could not use fir. Fir in that case would be a very poor article. If you want to make a desk like that (indicating), fir would be better. Yellow pine is so much like fir, it is difficult to tell the difference. Not one man out of five can tell yellow pine from fir board. Fir is largely used for flooring out in that local country. It is very largely used right in the Spokane territory for hardwood floors.

We did not make up this statement (McMullen Exhibit No. 3), but I checked it over with the lumberman who did make it. It was made from my knowledge of the business, and from price lists I was instructed to make prices on, from weights I was instructed to make the weights on; from the way the lumber runs, what it will cut out, and about what they do cut. That is not made from any experience as to the absolute manufacture in the Spokane territory, because I never have manufactured in that territory. I have no lumber yards of my own. I do simply a wholesale business and sell in the territories that I stated before that I sold in, that, is in the Dakotas. I do not sell any Minnesota product there. I sell fir and western pine in North and South Dakota. I sell in Nebraska,

but not as much as I used to. I have not done much business in the last two years, because we could not get the cars to do business with. I have not done anything to speak of in Nebraska in 1906 and 1907. I have done some business in Iowa. I shipped fir into Iowa; I do not know whether we shipped western pine or not.

I have sold western pine in Minnesota, not in Illinois. I have occasionally sold it farther east than Iowa. I have not gone east of late years with fir. I have gone as far as New York and sold fir. I deal just in fir, cedar, western pine, and yellow pine. The last wood I took on, in last January, 1908. That is yellow pine. The cedar is red cedar shingles; that is from the coast territory. Cedar does not compete with pine in any way.

Take the average cut of any one of the big mills on the Pacific Coast, we cannot cut over 60 per cent. as much as the C. A. Smith mill in Minneapolis or any big white pine mill. We do not cut any more fir and white pine. Yellow pine will cut as much solid wood as fir. The yellow pine of the west is like cutting butter. It cuts easier than fir,—the yellow pine of the south, and a very little worse than white pine.

I never operated a mill in western pine.

Re-direct Examination.

Of the several retail dealers I know, they all want soft wood, on dimension; as a matter of preference, on this dimension stuff, the majority prefer pine in preference to fir, grade for grade, and size for size, of the ordinary sizes they have use for. My experience shows me that the retailer and the farmer will pay five dollars more for our common pine board, grade for grade, than for the fir board in the markets I speak of, the same sizes and grades.

Taking a purchase from a mill, on a delivered price in Nebraska, or any place where I am doing business, the pine mill will net the most money on the board or on the dimension stuff, sold by the thousand, about $44 a thousand, or something like that. In addition to the price it gets the benefit of weight, and there is no question that a difference in weight does exist.

They do not ship any green pine lumber from Washington. Once in a while they get in some green to make the car weigh heavy. I have noticed probably one out of forty cars with green lumber in it.

I am familiar to a large extent with the character of tim-

ber on the east side of the Cascade mountains, in Washington and Oregon. Usually the character is about the same as the timber I have described in the Spokane district. In some spots there is more fir. I know of places over there where there is just as much white pine as in Idaho. I would consider the section I speak of to be a heavy timber section.

The effect of the advance in freight rates has been to set the line of demarcation about five hundred miles north. In other words, set it clear up to North and South Dakota. I have shipped yellow pine, since that rate went into effect, up and down the Grand Forks, in North Dakota.

Seventy-five per cent. of the manufacturers of yellow pine have dropped their prices. People will sell at a terrific loss to get some money for some purpose. Now, we have known prices made like that, which has made the market drop $6, $7 and $8. That is not the market. If you wanted to buy a million feet, you could not buy it. But some fellow has one, two, or ten cars, he has got to get some money, and he sells it at a terrific discount. I sold this yellow pine for Grand Forks, at Grand Rapids. I sold it right on the fir list. I think I sold it on a 52 cent rate, two cents above the old fir rate. That is from yellow pine territory. I did not have to cut the price. This is Grand Rapids, Minnesota, right east of Grand Forks, about 70 miles east. That is from 60 to 100 miles west of Duluth. It was sold on a 42 cent rate from the yellow pine territory, right on the list. The reason I started selling yellow pine was because I could not sell fir, and I wanted to pay office rent. This was short-leaf yellow pine. It was kiln-dried, the same as our own. It was flooring and ceiling, car bumpers, etc., high grade stuff. It was sold right on the list. I think I have a 42 cent rate on the list.

I sold fir for $41.00 a thousand feet, but there was a discount and that made it $38.50 per thousand. The sale was made this year at $38.50 per thousand on a 42 cent freight rate. The list weight per thousand feet is 2,000 pounds. These weights are pretty nearly right on all lumber. This sale did not realize $38.50 per thousand. There was a lot of other stuff in there, ceiling and other stuff nearer on a competitive basis with fir. I think the office has sold other cars besides this one right on this list. They do not allow them to sell off the list. We have a discount sheet which goes with that list. The discount on yellow pine flooring is $1.50 off from the list if I remember correctly.

The yellow pine people have lowered their price list about $4.00 per thousand feet. The freight rate remains the same. There has been practically no change in the freight rates at all in our territory from the yellow pine district. This cut of $4.00 a thousand feet took place January 2, 1908. On that date they dropped their price list $4.00 a thousand from the previous year practically. That is the list price. They sold under that price list afterwards $1.50 more on the same items, making a total drop of $5.50 a thousand, and no change in the freight rates at all. We do better than that on some other things. The drop which has taken place in yellow pine lumber is not due to any change in freight rates. I know something about the territory in Oregon, in Union and Baker County, by Baker City. I know about the character of the timber there. We used to call the lumber there "Mountain western." It is a great deal like Spokane pine. There is no white pine at Baker City but south of Baker City you get enough white pine. It is not being cut at all that I know of. I have been close to the timber on the Grand Run River. It is just as good lumber as ours or anybody else's for ordinary house purposes, which is 80 per cent. of the volume of the business. It is both yellow pine and western pine, like Spokane pine. It is not white pine. There is no difference between it and Spokane pine. There is a Boise tract of timber on the Oregon Short Line east of Huntington, about 60 miles north of Boise on a direct line. There is practically no timber on the Short Line east of Huntington, until you get to Boise. Then you have to go 60 miles north of Boise and bring the logs down to Boise. You have to go up the Payette River and bring the logs down. That is another tract of timber I looked over and refused. Others bought it afterwards. Going east on the Short Line there is another timber tract down through the Wyoming country, until where the Union Pacific crosses the Rocky Mountains. Boise and Baker City represent practically the end of the trees in the Union Pacific System to the east. Boise certainly does.

Southern Idaho is developing rapidly, perhaps more so than any other part of the West.

R. I. FARRINGTON (Record, page 403) testified:

I am second vice-president, in charge of the finance and accounting department of the Great Northern. I have been connected with that company for twenty years next August. I was auditor of disbursements from September, 1889, to May, 1894, assistant comptroller from May, 1894, to July, 1894, comptroller from July, 1894, to January, 1902; and second vice-president since.

All accounting offices have tried to see if they could not devise some means, method or formula for ascertaining the cost of doing freight business and the cost of doing passenger business separately, but they have never been able to get at an accurate or actual basis. There is no actual basis for dividing the cost of common items accurately between passenger and freight business. For instance, there is no known basis for dividing the cost of ties between passenger and freight business. If you adopt some arbitrary basis the whole result will be more or less arbitrary.

I have made an examination of the records of the Great Northern Company to ascertain the percentage of increased cost of conducting freight transportation in recent years. I have had some tables worked out to get the percentages of increased cost as accurately as the same could be ascertained. For the purpose of comparison I took the calendar year 1895, and the calendar year of 1900 and of the eleven months ending November 30, 1907. For the year 1895 I included the entire Great Northern System, the Great Northern Railroad and its proprietary companies. For 1900 and 1907 the entire system exclusive of the Great Northern's Mesaba Division.

The Mesaba Division of the Great Northern consists of about 320 miles in the northeast corner of the State of Minnesota, and the main line extends from Cass Lake, Minnesota, to the ore docks at Superior, Wisconsin, with branch lines running up to and on the Mesaba range. We cut that division out, because there is no lumber hauled over the line. The line has been built since 1895 to accommodate business which has developed entirely separate from the rest of the system. The purpose of the figures I have prepared, has been to compare the cost as near as it could be ascertained of conducting transportation in 1895 with the approximate cost of conducting it in 1900 and also for the eleven months of 1907, ended November 30, 1907.

Taking the year 1895 as 100 per cent., the cost per freight train mile for the calendar year 1900 was 143.82% of 1895; for the eleven months ended November 30, 1907, the cost per freight train mile was 207.7 of 1895. Of course, in 1907 it is more than twice what it was in 1895 per freight train mile. Per freight car mile, using 1895 as 100 per cent., the cost in 1900 was 126.19 and the cost in 1907 was 162.77. Consequently it cost nearly 63 per cent. more to haul a freight car one mile in 1907 than it did in 1895.

The method that was adopted for securing these figures, was as follows: I employed the method that was required by the Commission to be used in the reports that were made up to and including the report for the year ended June 30, 1893. Those requirements are found upon page 42, of the form for reports to the Commission, for the year ended June 30, 1893, and read as follows:

"For the apportionment of operating expenses between passenger and freight traffic the following instructions, prescribed by the Interstate Commerce Commission, should be followed: All expenses which are naturally chargeable to either passenger or freight traffic, should be entered in their respective columns. Expenses which are not naturally chargeable to either traffic should be apportioned on mileage basis, making the division as between passenger and freight traffic in the proportion that the passenger and freight train mileage bear to the total mileage of the trains earning revenue. This computation should be made from data furnished under train mileage, page 61. Loss and damage and injuries to persons should be apportioned to the train which occasioned the outlay, passenger or freight as the fact was. Mixed trains will be continued for the present as one-quarter passenger and three-quarters freight."

We followed those rules and divided operating expenses for the three periods mentioned between passenger and freight, under the rules of the Commission which I have just read. We apportioned to the freight those items which we could determine were clearly incurred on account of the freight service, and doing the same for the passenger service, and then dividing the common items upon the basis indicated by what you have read. I adopted identically the same method during each of the three periods. The object of using calendar years was to bring the cost down as near as possible to the date the new schedule of rates went into effect. That was one reason. The

second reason was so as to reflect for as long a period as possible some wage increases that went into effect last April and May. To have used the fiscal year for these statements would not have made them complete because the fiscal year ended June 30th, and there would have been but one or two months of the fiscal year that would include these wage increases in the figures.

The reason why I have given figures of percentages is because the figures showing cost would not be actual cost; they would simply be approximation, and they might be misunderstood, they might be considered as actual when they are not. They are approximations, and as approximations they can readily be compared. The percentages are fairly accurate and the percentages of increase based upon these approximate figures are as accurate as if the percentage of increase had been based upon absolutely accurate figures. That is, these percentages will represent, I think with great accuracy the increase in the actual cost if it could be ascertained.

Whatever errors are unavoidable in the figures for the year 1895, these same errors have been continued and adopted in order to preserve the same relation for 1900 and 1907. On that arbitrary basis, on that rule, excluding the Mesaba Division, the cost per freight train mile in 1895 was $1.19-98/100; in 1900 it was $1.72-56/100; in 1907 it was $2.41-24/100. The figures per car mile are found by dividing the total cost by the total miles of all freight cars; for 1895 the cost in cents was 4.62; for 1900, 5.83, for 1907, 7.52 cents.

The exclusion of the Mesaba Division has reduced the cost for 1900 and 1907 somewhat below what it should have been, for this reason: There were certain expenses—those that are grouped under the head of general expenses, such as general office expenses, salaries of clerks, advertising, and matters of that kind—which would have to be apportioned among the divisions on a basis of train mileage. It is purely arbitrary. Now all iron ore is handled on the Mesaba Division, with a very large train mileage. It necessarily follows that a large proportion of advertising expenses, salaries, and things of that kind, are charged to the Mesaba Division, when really there was no expense for it. We do not have to advertise iron ore, and the accounting for the iron ore traffic is the simplest thing we have. These common items were apportioned between the divisions first on a train mileage basis, and then the amount allotted to the Mesaba Division was de-

ducted. I presume if we had not added the Mesaba Division, our advertising and general office and clerks' expenses would have been exactly the same as they were. You see we have arbitrarily reduced the cost somewhat by excluding that division.

If the general expense could be accurately divided as between these different years these approximate cost figures would be somewhat higher. These figures show that the cost per freight train mileage has increased 101.07 per cent. over 1895. And the percentage of increase in cost per freight car mileage was 62.77 per cent. over 1895. The explanation of that difference in the respective increases per train mile as compared with car mileage is that by reducing grades and buying heavier and more powerful locomotives we are able to haul more cars in a train now than in 1895 or 1900. That accounts for the less rapid increase in the cost per car mile as compared with the increase in the cost per freight train mile.

I made some figures for loaded freight cars, but they do not mean anything. The results do not mean anything, but I will give you the results. The percentage of the cost of loaded freight cars to all cars is practically the percentage of loaded mileage to the total mileage, because the loaded cars would be affected by the empty car mileage. It is practically the same operating expense divided once by the mileage of loaded cars. Then divide the dividends the second time by the mileage of all cars. It is just like your car mileage. The difference between the apparent cost of moving loaded cars and the apparent cost of moving all cars would not in any sense reflect the cost of moving empty cars. This is the average cost of all freight cars loaded with all commodities from all parts of the entire Great Northern System exclusive of the Mesaba Division. It is on the basis of those figures that the relative increase in the expense of doing the freight business has been worked out. The increased cost has been brought about by increases in the cost of fuel, increases in the cost of all classes of material and supplies used on the railroad, increases in wages and the inefficiency of labor now as compared with what it was ten years ago. By inefficiency of labor, I mean that on account of the general prosperity and the great demand for all classes of labor in all classes of business, we have to put up with an inferior class of labor, and have had to take anybody we could get to do the work.

Secondly, the average amount of work has not been as high as it was during ten or twelve years ago. I refer to all classes of men. Labor conditions have been such that we have had to take anybody we could get to do the work.

Taxes have increased regularly. For the calendar year 1895, the taxes for the entire system were $618,489. For the calendar year of 1900 the taxes were $963,287, and for the 11 months of 1908 the taxes accruing were $2,006,184. The taxes in 1905 were 6.48 per cent. of the operating expenses for that year. The taxes for 1900 were 6.08 per cent. of the operating expenses for that year; the taxes for the eleven months of 1907 were 5.81 per cent. of the operating expenses of that period. The total taxes show a small decrease in percentage to the operating expenses; that is in total, not by units. Taking the percentages of taxes to operating expenses and applying them to the car cost for the three periods, I get the taxes per car mile, and subtracting the 1895 cost from the 1900 cost and the 1907 cost, I get the increase in taxes per car mile, and then of course the percentage of increase. The taxes per car mile for 1900 increased 18.39 per cent. over 1895 and the taxes per car mile for 1907 increased 46.15 per cent. over 1895.

We have done everything we possibly could in the way of making large expenditures to haul the traffic at the lowest possible cost. Take for instance, in 1893, when this rate was named, we had to haul lumber over the Cascade Mountains by a switchback. that zig-zagged back and forth over the summit of the mountains. We began shortly afterwards to build a tunnel through the mountains, over 2-1/2 miles long. It was finished and opened for operation December 20, 1900, at a cost of over two and one-half million dollars. And it was cheaper to run the train through the tunnel than over the top of the mountains. We go over the Cabinet Range of mountains which is pretty close to the Rockies, and in order to improve the crossing there we built a new line from Columbia Falls to Jennings, about 111-1/2 miles long, and cost us nearly seven millions of money, $6,910,000.

We crossed the Cabinet Range by the old line at an elevation of 4148 feet. The elevation for the new line is 3285 feet. There is practically a reduction in elevation of 860 feet. On the old line the grades were one and a half per cent., 79 feet per mile. On the new line the westbound grade is 1-1/4 of one per cent. That is practically 13 feet per mile. Eastbound the grade for a short distance is 7/11 of one per cent., say 36 feet. That is only a short up grade. The curvature of the

new line is 3-1/2 degrees and on the old line 10. The effect of the construction of the new line gave us a very marked increase in the number of cars per train after that new line was built. Each of these two enterprises, the construction of that tunnel and the building of the new line from Columbia Falls to Jennings had a marked influence toward the reduction of the cost of handling freight business over those portions of the line. I have only mentioned this new line from Columbia Falls to Jennings because it is a large item, but there have been many other line changes which have produced the same results, but none of such magnitude. A large portion of the line on the east side of the Rockies has been relocated and very materially improved. Large sums of money have been paid for line changes and grade reductions.

There was filed in the Pacific Coast case a table showing the amounts that had been appropriated to funds for improvements, and the statement filed in that case would cover the period from July 1, 1897, to June 30, 1907. There had been expended from the fund for improvements and renewals on the Great Northern road, in the way of improvements, $18,592,834.36. In addition to that the Manitoba Company, of which the Great Northern is the lessee, has expended from January 1, 1895, to February 30, 1907, for improvements on the same road, $3,952.000 or about that sum. There is a total expenditure of $22,600,000 for small additions and improvements to the road. This does not cover new mileage or new equipment. It is just simply for additions and improvements to the road itself. In addition to those improvements to the road, the Great Northern Company and its proprietory companies, expended for additional equipment from January 1, 1895, to November 30, 1907, $33,712,481.84. That does not include the cost of a single car or engine purchased in replacement; they are extra. This amount of money is the cost of additional equipment. Of course that additional equipment includes these more powerful locomotives, which would enable us to increase the number of cars per train.

In round numbers the aggregate amount of money that the Great Northern has expended for these purposes is a little over $56,000,000.

No part of this twenty-two million dollars expended for improvement on the part of the system leased from the Manitoba Company was expended on the Mesaba Division. This twenty-two million dollars was expended by the Great Northern Company for additions and improvements of the line proper. The money on the Manitoba Line was expended by

the Manitoba Company itself. The entire mileage embraced within the Mesaba Division was built, owned and operated until 1902 by the Eastern Railway Company of Minnesota.

These various expenditures also included the lengthening of passing tracks, and the adding of new passing tracks. A large proportion of that sum represents the extending and lengthening of all passing tracks and the building of new ones; the acquiring of new terminal yards and all matters of that kind. This reduction of grades and taking out of curves, has had a marked tendency toward the reduction of the item of expense known as helper mileage. The reports to the Commission call for the percentage of helper and revenue mileage at present. I do not know whether they did far enough back to give very much light on that subject, however. This increase in cost of freight car mileage has occurred in spite of all the expenditures that I have referred to, in spite of everything that we could do, in spite of all the money that we could expend intelligently and in spite of the best knowledge that we could get to operate the road; the cost per mile has increased during that period nearly 63 per cent.,—after we have done everything in the way of reducing grades, building tracks, buying equipment and everything we could do to keep the cost down.

In ascertaining the amount of the freight proportion, the total operating expenses include expenditures for taxes, for improvement and interest on the cost of the property used. The amount that was divided by the freight train mileage and the freight car mileage to get those average costs was simply the freight proportion of the operating expenses. Those operating expenses do not include taxes. They include no interest, they include no improvements, and they have included no depreciation of equipment except for four or five months under the present classification of the Commission. The operating expenses for practically the entire period are very closely in accord—of course they are absolutely so since the first of July—but previous to the first of July they are very closely in accord with the classification of operating expenses that the Commission put into effect the first of July of last year. Of course it is a generally recognized fact that if the cost remains the same as your density increases the cost per unit decreases. But these figures show that there has been an increase in cost per unit and they simply prove that the expenses have gone up in much greater ratio than the density has gone up. In other words, that the rule has operated in an opposite way from the ordinary oper-

ation of it. The ordinary operation is that if your rate and your cost remain the same and your expenses remain the same your cost per unit decreases with an increase in the number of units.

In the ascertainment of this percentage of 62.77 increase in the cost per car mile, that result appears after giving credit for the increase in density of traffic in the intervening year, because the density of traffic is reflected in the increased car miles.

Every possible effort has been made to keep the empty mileage down to the lowest possible point; and considering everything, I think we have succeeded pretty well in doing that. Since 1895, for instance, we have developed an entirely new line of business—the Mesaba ore business—iron ore from the Mesaba Range. That is practically an empty movement one way—very largely an empty movement.

The empty car movement on the Mesaba Division is west. The cars come from the Mesaba Range down to the docks on Lake Superior and then go back empty. The empty movement is westward.

I want to explain that we developed this new line of business, which resulted in an immense empty mileage. In addition to that there has been a large increase in the empty mileage westbound necessary to haul lumber. But in spite of those two increases, our percentage of empty mileage to the total mileage on the system now is substantially what it was in 1895. That is, taking the reports that were made to the Commission, the reports for all the roads of the system for the fiscal year ended June 30, 1907, it shows that the percentage of empty to total cars was 24.49. For the years 1895, when we did not have this Mesaba Division, and when we did not have to haul empties out to the coast to load with lumber, the percentage was 24.20.

Doing everything we could, using all possible skill and ingenuity to find loads for our cars has brought about the retaining of this percentage at about these same figures. We have done a great deal in the way of increasing the load of merchandise cars and matters of that kind.

Cross-Examination. (Record, p. 426.)

I cannot ascertain the cost per car mile. I gave an approximate cost. In 1895 the figures I gave were, I think, were 4.62 cents per car mile. In 1900 5.83 cents, and in 1907 7.52 cents. That was the approximate cost of moving all cars one mile.

I made the estimate on the entire system. We are operating now 6,600 miles. The calculation for 1895 was based on 4,337 miles, for 1900 on 4,986 miles, and for the eleven months of 1907 the calculation was based on 5,297 miles.

The distance is 1,830 miles approximatedy from Seattle to St. Paul. These figures are based upon the total mileage for the entire system. If you want to find out the approximate cost of any movement you multiply that 7.52 cents by the number of miles. This is all together. It is the average of all kinds. I would not know how to get at the difference in the cost of moving different kinds of freight. I have absolutely no way of getting at it accurately, the cost of movement of any particular commodity.

We send statements to the division superintendents. They are gotten out under my supervision. We give an approximation of the cost of moving freight on the different divisions. I used some of those figures in making this statement, that is, I used the total operating expenses that were shown by those statements. I used nothing else except the total operating expenses and the total car mileage. I used all the figures of operating expenses that are on those statements, and I included in those statements all the things that I have included in this statement. I have no copies of those reports to the division superintendents with me here. I have them in St. Paul. They relate to both passenger and freight business. We do not segregate in these statements local and through freight. It is generally considered that it costs more to move local freight than it does through freight. It is generally recognized that local freight costs more to handle than through freight. It would be impossible to make up any statement of the interstate business and make an estimate on the interstate business. I cannot get at the cost of handling any class of commodity or particular kind of freight. It is handled in the same train, over the same rails, and over the same ties and bridges, so that a commodity may be carried at a comparatively low rate, and yet may be really making more money than the local rate which is higher.

There are several reports made to the Commission, for the component parts of the Great Northern System. The Great Northern, and the Willmar and Sioux Falls, and the Montana Central, and the Watertown and Pacific. They are all operated separately, but since the first of July they have been operated by the Great Northern, and are now consolidated with it. The annual reports made by the Great Northern to the Commission do not include those separately oper-

ated lines. The annual reports made to the stockholders showed both figures.

The annual reports show first, the table for the system as a whole; then there is a table dividing those results between the different companies forming the system; and then there is the revenue account of the Great Northern Railway proper, which does not include the subsidiaries. Each separate road show the earnings just the same as the main line. That is the way in all of them.

Beginning with the first of July, the reports to the Commission would include everything in the case of the Great Northern road. The gross earnings have increased very largely from 1895 to 1907. They have increased very, very greatly. The cost of movement, the cost of transportation has increased very little on account of the congested condition of the traffic. There has been congestion only on one portion of the line and during a limited time. I do not know about the conditions on the Northern Pacific.

Some of the expenses of the Cascade tunnel were paid for from earnings. The proceeds of the bonds that were issued to build the Pacific extension, including the tunnel, did not equal by some six million dollars the cost of the extension, and we had to charge the balance of six million dollars, as well as some few hundred thousand dollars we took out of earnings, off to profit and loss. The statement that has already been filed in the Coast case shows that there was already appropriated out of the surplus to the fund for the construction of the Cascade tunnel, $1,950,000. That did not quite pay for it. We have spent eighteen million dollars for betterments and permanent improvements since 1895, from earnings, besides the ordinary maintenance which with us is restricted to straight maintenance. I mean by that, it does not include improvements.

The Northern Pacific and Great Northern are paying for the Portland & Seattle Road, but both companies made quite large issues of capital stock a little while ago in order to get the funds to make payments of that kind.

They have not advanced any out of their net earnings for the construction of the Portland-Seattle road. They might have made some advances out of their treasury before the proceeds came in for their stock. How much, I don't know; possibly two or three million dollars may have been temporarily loaned.

I help make up the annual reports. I cannot say how the Great Northern's surplus is invested. The balance sheet shows

on one side the surplus and the liabilities, and on the other side the assets. You cannot take any dollar of assets and say that that one dollar came out of the surplus, or that it came out of the bonds, or that it came out of the stock; and there is not any human being that can do it. Our bookkkeeping shows the balance of profit and loss account which is what you call surplus. That is absolutely accurate or your books would not balance.

Further Cross-Examination.

Personally I had nothing to do with these reports showing these increases in expenses. I have charge of the accounting department, and told them what to make up. I know they are just as correct as the ordinary clerks can make a statement. The account of the operating expenses would vary with the difference in opinion in different individuals, as to whether one item should go into operating expenses or not, but our plan, or organization has been ever since I have been in control of the accounting department, that nothing can be included in either betterments or in the way of new work, anything that has got to be specially authorized, nothing of that kind can be charged to any account, either operating expenses or improvements, without my initialing the account when it comes down to me. I have pursued the same policy from 1895 to 1907, as to what should be put into that expense account.

If our report shows that large sums of money that have been expended for betterments and improvements have been put in the operating expenses account, and a very much larger sum has been put in in the last five years than in the first five years, it would show a corresponding increase in this report. I think you refer to the letter press in the report where it states, each year, the amount of extraordinary work that has been charged to operating expenses. I simply want to say that if that is what you are referring to, there is not a single dollar of the amount but what is absolutely and properly an operating expense, and can be so considered under the present operating expense classification of the commission. We have appropriated each year for betterments, replacements and equipment charges as our ability would allow us to do, and they have been larger than for the previous five years. The amounts that have been appropriated from our revenue account to the funds have been used in making improvements. They are not in the operating expenses. The statement in report of operating expenses, of deductions from

income, "permanent improvements," "$2,000,000," means that we took out of our surplus, what you call our surplus earnings that year, or out of our revenue, $2,000,000, and appropriated it for improvements and renewals to be made later on. When we appropriate $2,900,000 the same year, that means that in that year we would charge against our income account depreciation on the equipment, which the Commission now states shall be charged in our operating expenses each year. We had not charged it to our operating expenses before July 1st, but for two years had charged it to income, and now we charge it in our operating expenses. All the roads have the same system. I meant to say that we charged depreciation two years ago and stated it out of our income as a separate item, and that is one of the items referred to. A large portion of the improvements have been paid out of what you call the operating income. I call it the appropriations that have been made from the revenue to pay for those things. It has been paid out of the gross rate.

I never made and could not make any statement showing the cost of handling one class of business as compared with another class. I don't think I have ever made any statement comparing the cost of handling less than carload with carload business. To do it would be simply on the basis of an opinion, you might say. An accountant could get at the cost of handling a car, and if that car contained 20,000 pounds or 40,000 pounds of freight, there would be the cost per hundredweight of that. And if the car happened to be loaded with three or four, or five or six thousand pounds of merchandise, and it would cost the same to haul the car, there would be the cost of handling less than carload freight. They might get at it in that way.

I have been with the Great Northern twenty years in August. I am, in a general way, familiar with some of the suits against it in Minnesota, but not with those in other states. I know something of the suits affecting the local distributing rates out of St. Paul last year. I was up there at the trial. I should think that probably any figures given by the Northern Pacific, whatever they showed as to the less than carload and local business as against through business, would be pretty near correct for the portion of the line they were made up for, and for the class of business they handled, etc. I do not know whether we are handling our business for less or more than the Northern Pacific.

These figures here are only approximations at best. The

percentage of operating expenses to gross earnings is actual. Our percentage of actual operating expenses as returned to the Commission shows a large increase. I think the figures that you have show an increase of something over 10 per cent. in the ratio of operating expense to gross earnings. Our percentage of operating expenses to earnings in 1900 was 52.87 per cent. I cannot give the Commission any idea what it costs per ton per mile for us to move freight on our road. That is no unit that amounts to anything. You cannot use that because you cannot take and roll a ton out by itself. The unit of cost on a railroad is a train. The only subdivision you can make of that cost is the car. You cannot move a single passenger by himself unless you give him a tie pass, and you can not move a single ton. You have got to load the ton into the car and the smallest unit you can get is a car, and the real unit is the train. I think the percentage of increased cost has been relatively the same in passenger business as in freight business.

This iron ore that we are now moving is moved in large quantities. That does not make a very heavy westbound movement empty, because the average distance hauled from the mine to the docks is 115 miles. We have been hauling quite a number of cars back and forth; but including all that we have been able to keep our empty mileage down to what it was a number of years ago. I think the mileage ought to be still lower, and it would be if we did not have to haul empty cars to the coast. We have larger cars now than we had before. The increase in the revenue and the increase of loading cars from the figures I have made up on Coast lumber, would be about three to five per cent. on lumber from the Coast. I have simply used coast lumber because I knew it was heavier than other lumber, and I thought if the figures were fair for that lumber they would be here. Taking the rate the same that would mean that the loading since this rate went into effect has increased from three to five per cent. per car, and the revenue from the car has increased from three to five per cent. I have the number of cars of fir lumber received from points west of Leavenworth to the Minnesota Transfer during the year, received at the track only, because I thought that would be an average, and I did not take the haul of that business, because it would be an interminable job, and would cost too much money. We have that in our records. I took it for the year 1895 and the year 1900. I just took the years 1895 and 1900, those two periods, in order to compare with the third period

that had already been in the record, to see whether there had been any material increase in the loading per car of lumber. I have no record of the year 1906 and 1907 showing the income received from cars of lumber from the Pacific Coast over the Great Northern to Minnesota Transfer as against 1893. Nobody has prepared or asked me to prepare that. I had them go through the lumber received at the track for Minnesota Transfer; I had them start and pick out every car that was loaded, that the abstract showed was loaded with fir lumber from a point west of Leavenworth, and they put that down and added it up, and divided it by the number of cars. They did not draw off the earnings, Mr. Teal; and it showed that the average loading in 1895 was 47,242 pounds.

For 1900 there was a similar calculation made, but in 1900 it showed less. That is the reason I did not speak of it. The average for 1905 was 45,205 pounds. I think there must have been some peculiar conditions to account for that. I had these figures gotten up in pencil form about ten days ago. These figures are already in for 1907. I did not include 1906, because I was trying to compare the increase in loading for the same years that I had compared the increase in operating cost. The 1907 figures were already in the record in the other case. I understand there was a table filed in the Pacific Coast cast that gave the average weight of carloads of lumber for August, 1907; and we have had so much work to do in gettinfi out all the statements that have been required in all these cases that we did not do any more of it than was absolutely necessary, and as long as I could avoid working up a figure for 1907, having it in the record, I did so.

For 1895, the average carload was 47,242 pounds. In 1900, 45,205 pounds. My memorandum here is that the average weight shown upon the exhibit I referred to was 48,668 pounds for 1907. That is on the Great Northern. That does not include shingles, it is simply lumber. The statement covers simply shipments west of Leavenworth. Mr. Maguire's statement is Leavenworth and west.

For the last six to ten years the Great Northern has been paying a dividend of 7 per cent., and it has created some funds. We have not saved them, we have spent them. We appropriated the money and spent it. We have bettered the road, and that is the reason we have been able to haul the stuff at the rates that we have been able to do it. We have been able to do it at those rates by spending this money for improvements. It would not have been fair to have used operating expense figures for 1893 or 1894, because we would

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have had the low rates of wages that were made right after the collapse of 1893, and which were partially restored in 1894. So I took the calendar year 1895 as being the first complete year; and you want to consider that the expenses were very low in 1895. The increase in wages that I have been talking about has been a general condition of all lines of business. I think the percentage has been a little higher possibly in the case of railroads than anywhere else, in other classes of business. Common labor has dropped considerably since the panic struck us in the latter part of 1907, but the railroads require comparatively little common labor in the winter, because of climatic conditions you cannot do much work. You do not have very many men, you do not have any extra gang men; we have got comparatively few section men in the winter. You will get a better class of labor, as there are fewer jobs. A man will work harder to hold his job. The chances of a man working for less do not seem quite as good as they were some time ago.

Re-direct Examination.

The figures I have prepared and from which this percentage of increase has been shown, were prepared in my office, under my direction, and by our regular office force, by men who have been in the employ of our company for a considerable period of time and in whom I have full confidence. The results are correct, and the computations and everything are as correct as it is possible for the ordinary clerks to make them. These various appropriations for improvements and betterments have not entered into our calculation showing this percentage of increased cost. But the percentage of increased cost was shown by dividing the operating expense by the mileage figures. These figures that Mr. Teal has paraded before us have nothing to do with the factors which made this result of the increased percentage. This western lumber comes over the mountainous portions of the line. The relative cost per car that I have stated is the average of all the carloads, approximately speaking, on the whole line. My judgment would be that it would cost more to haul a car through from the coast than the average of the entire system. The average cost is a cost brought down by the greater number of cars that are moved in the east. The cars going back and forth between the Twin Cities and the wheat fields.

Every car from the coast has to pass over what used to be

three but what I will call now two and a half mountain ranges. You cannot haul as long a train over the Cascade Mountains as you can haul in Montana or in Dakota. It naturally costs more to haul your car over the Cascade Mountains and to haul it over the Cabinets and over the Rockies than it does on the prairies. Taking all those things into consideration, taking the fact that this lumber passes through the most congested portion of the road, as Mr. Stevens referred to in his questions—that is, the section between Larimore and Devil's Lake, where we had a lot of stuff poured on from branch lines—and considering the fact that the lumber has to use expensive terminals at the eastern end, and that there is considerable expense connected with connecting it up and gathering it up at the western end, I honestly believe that the lumber cost is somewhat above the average cost of all the freight.

I do not believe that the cost of moving lumber from the Pacific Coast from west of the Cascades would be considerably more than it would from the Spokane territory. I think it would cost more to haul that lumber from Spokane than from the coast on account of the greater amount of empty car mileage that is required. You know the business on the coast is greater than it is at Spokane, and that it is a merchandise business. The loaded business going out of the coast, then, is greater than the loaded business going to Spokane; and you know that they want on the coast every single car they can get, or they did want it before this trouble came on, every single car they can get to load back with lumber; and you know that we have got to have cars. If we have no empty cars, we ought to haul them out of Spokane to load with wheat at Harrington and other places, and they would go through to the coast, and they would be loaded back with lumber from the coast. Now, the only way we can supply the Spokane mills, or the mills of the Spokane district, with cars to load back lumber, seems to be by hauling them out empty; and the more the business increases, the more empty cars we have got to haul all the way.

I think you will find that several hundred empty cars start from St. Paul to the Pacific coast or Spokane for lumber. Neither the old rate or the present rate, the coast rate nor the Spokane rate are sufficient to cover the empty movement out and the loaded movement back. Consequently, in order to get cars to load out here on the coast and bring them back on what was the forty cent rate, and is now the fifty cent rate, we have got to load them as far west as we can.

The rate was predicated on a loaded mileage out, all the way out, because when the rate was made in 1893, we had loads all the way out, and we had to haul the empties back, and we wanted to avoid that.

The percentage of empty cars to loaded cars for the entire system is 24 per cent. On the lumber business, as near as we can figure it out, it is between 40 and 45 per cent. If you go to work and get the empty cars that go west through the Cascade tunnel, to load with lumber, you will get some information that would be of some good. I cannot give you any statement of the Great Northern as to tonnage delivered in Idaho and eastern Washington; I cannot tell you absolutely what the empty haul is, without knowing that. I can simply tell from my judgment, based on the reports I see from day to day. I can simply base it on my judgment. I have no tables which will show the figures, and I could not get any without going to our conductor's car-wheel reports, and I have not done that, or tried to do it. I would not have had time to do it if I had been requested. I know of no other calculation being made in regard to the cost per mile and per car and per ton on any other basis than the one I have stated there. I know that this same basis, although it was not reduced to figures per car, was used by the Pennsylvania Railroad in their two-cent fare case in Pennsylvania, which they carried up to the Supreme Court of that state, and I know that the lower court of Pennsylvania approved the use of this train-mile basis for dividing the common expenses, based on the same data that we have here. That is the only basis that I know of. While it is not accurate, it is the only one I know about using. It is the only one I could suggest to get approximations. The statement of the expenses of the different divisions for the moving of freight that we send to the division superintendents is different from this statement. You see, there is a whole lot more of it that is not in this statement. I am glad you asked me that, because I want to explain that. Mr. Stevens referred to that statement. It does not mean anything, because you take every single account that is not absolutely local to the division, and then pro-rate it between the divisions on arbitrary percentages or train mileage or something of that kind. Now, that statement is gotten up simply to incite rivalry between the different division superintendents, and in order that we may get the best possible results and the lowest possible cost. If there is anybody that is benefited by our getting up and sending out statements of that

kind, it has been the shippers; because by getting those statements, by having our division superintendents, you might say, "scrapping" between each other to see which could make the better showing for the division, it has produced a better result in reducing the entire cost, and enabled us to handle our business at reduced rates right straight along.

On the comparative basis it has reduced the cost. I do not know it has reduced the cost as a money result. If we know the total amount we spend and we have our train mileage or our car mileage for a divisor, and you divided that into your money, and your cost per unit is more, you know that your cost has increased in the aggregate. There is absolutely no way in which you can arrive at what it costs you to transport one train, one ton, one car or one passenger. You cannot get at it actually in any way. You can approximate it with a fair degree of accuracy; and, by making the approximations for a definite period and using the same basis, the percentage relation of those figures is an accurate one.

J. B. BAIRD, a witness produced on behalf of the defendants, (Record page 498), testified:

I am general freight agent of the Northern Pacific, with headquarters at St. Paul.

Comparing the old with the new rate, at the principal basing points, that is Omaha, Kansas City, Denver, St. Louis, St. Paul and Chicago; under the old basis of rates, the differential, under the old rate, in favor of Spokane, was 5 cents. Under the new basis, there is the same differential. As Kansas City, Spokane had no differential under the former tariff, and under the present tariff have a differential of five cents. To Denver, Spokane had no differential under the former tariff, and under the present tariff it has a differential of five cents.

To St. Louis, Spokane had no differential under the former tariff, and under the present it has a five-cent differential.

To St. Paul, Spokane had no differential under the former tariff, but under the present tariff it is five cents.

To Chicago Spokane had no differential under the former tariff, but under the present tariff it is five cents.

That is the comparison of Spokane with the coast rate.

A comparison of the former rates from Spokane, and what are known as the Montana and Oregon rates, would show the following:

To Omaha, Montana and Oregon had a five cent differential, and under the present tariff their differential is 7 cents.

To Kansas City, Montana had a differential of ten cents, and under the present tariff, it is 7 cents.

To Denver, Montana had a differential of five cents, and under the present tariff it is five cents.

To St. Louis, Montana had a differential of 3 cents, and under the present tariff it is 2½ cents.

To St. Paul, Montana had no differential, and under the present tariff they have a 2-cent differential.

To Chicago, Montana had no differential, and under the present tariff it is 2 cents.

When I say Montana, I mean the Montana-Oregon district. That district would take in Baker City and points in the Blue Mountains of Oregon, and it would take in points on the Northern Pacific, Hamilton, Missoula and Bonner, which, I believe, are the only mills in that district.

Cross-Examination.

There was a slight movement of lumber from the Spokane district into the Kansas territroy. That bases on the Kansas City rate. It was not a heavy movement. The Oregon rate, as compared to the Spokane rate under the old tariff, was more favorable for Spokane, 3 cents a hundred. The old rate to Montana points on the Northern Pacific was 40 cents, and into the Spokane territory it was 50 cents. That is over the Northern Pacific to Kansas City. The old rate was 40 cents and the new rate is 50 cents. Under the old tariff the rate from Spokane to Kansas City was 50 cents, and from eastern Montana points on the Northern Pacific. Taking it through North Dakota and South Dakota, I would say probably there were more rates advanced 5 cents than 10 cents. The advances run higher in South Dakota than they do in North Dakota. I think as to some of the mills immediately east of Spokane, the advance has been a little higher than the advance at Spokane. The largest volume of the movement of lumber over our line from the Spokane district was from Sand Point to Coeur d'Alene. To some points those were more than 5 cent advances. Sand Point and the Minnesota Transfer was advanced 5 cents a hundred. Coeur d'Alene, 5 cents a hundred. I have been giving simply the base points. There is a large movement in North Dakota, and the advance has been greater in some cases than it has to the Minnesota Transfer. In North Dakota I should say the advance would run from 3 cents to 7 cents.

J. P. McGOLDRICK, a witness produced on behalf of the Oregon Lumber Manufacturers' Association, (Record page 515), testified:

I am connected with the McGoldrick Lumber Company; I am its president. The list which you show me is a classification of prices as to different widths and grades of lumber, and it is a guide. We have no average discount from the list. That list did not represent the prices when it was issued. We figure on mills at Spokane, and sometimes lose business when we figure four or five or six dollars less than the list. We are not selling lumber on that list, because we are not getting that price. We are not trying to sell. We are only selling about one car of lumber every two days. It depends on the character of the lumber. We couldn't sell lumber at that list, or anywhere near it. This list was issued January 4, 1908. It represents a standard to go by, but we are not selling on that price.

Cross-Examination.

We meet legitimate competition, regardless of the list, if we desire to sell lumber.

A. C. DIXON, a witness produced on behalf of the Oregon Lumber Association (Record page 518), testified:

I am in the milling business in the State of Oregon, in the Willamette Valley. We operate all rail mills, exclusively. Our mill sells quite largely in Colorado and to a considerabe extent in Nebraska, and also Utah. We come into competition with white pine or western pine, rather, in Idaho, Colorado, in the southwestern portion of Wyoming, and to some extent in Nebraska, although we do not sell heavily there.

The mills in the southern portion of what has been defined here as the Inland Empire territory have a differential to Salt Lake. The effect there has been, so far as our mill is concerned, that we are absolutely unable, and have been for the last several years, to sell any inch common lumber, either rough, surfaced on one side, shiplap or dressed and matched in the Utah territory; and that same thing is true of Colorado

and such portions of Wyoming and Nebraska as we come into competition with the western pine. Our materials are what the western pine people denominate as piece stuff and what we call dimension, and our sales in these same territories have been restricted. We have been on a strictly competitive basis with western pine. For instance, with reference to inch material, concerning which I said we had been entirely closed out of these markets by pine, a pine board of the same size and width and the same quality as to the number of knots, the number of pitch pockets, and blisters and other defects sells for more money in these markets than does the fir and is preferred to such an extent that they don't sell fir, as I have stated in those sizes and grades. Take a ten-cent differential from what is termed the Spokane territory into the Denver territory, and in inch stuff, dimension stuff and small piece stuff, we could not sell against the pine, nor could we sell siding against pine.

Cross-Examination.

There is no movement in lumber now from Spokane, by the O. R. & N. that I know of. I have seen western pine in Colorado from the Inland Empire. Under the old tariff the mills in the Baker City and La Grande district had a differential to Colorado and Nebraska and Utah, and that is the reason we have not been able to sell any inch stuff in there.

Re-direct Examination.

We have never been able to sell inch common lumber in Salt Lake territory to any appreciable extent. The market for inch common lumber has been supplied with pine, so far as my knowledge goes, with the exception of some hemlock. Very largely western pine from the territory known as the Inland Empire. Some of it came from Baker City, but whether any of it came from Spokane or not, I do not know. Under the old tariff the differential from Baker City to Utah and Colorado, was 10 cents.

Speaking for my own mills, we don't sell in the Dakotas, and I might say that we do not sell in Idaho. The competition that they have from fir does not come from the mills on the Southern Pacific, in Oregon. I know from our manufacturers, but not personally, of the competition between Wash-

ington fir and western white pine in Dakota. We have four mills in Lake County near Eugene, averaging about 130 miles south of Portland on the Southern Pacific. It is 130 miles to Portland, and I don't just remember the distances to Baker City or La Grande from our mills. I should judge it is four or five hundred miles. A 10-cent differential from Baker City will make a bad matter worse. Where we did sell considerable piece stuff and small dimension in Utah, and Nebraska and Colorado, we would naturally sell less, unless we could absorb the differential.

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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1911.

No. 452.

THE INTERSTATE COMMERCE COMMISSION, APPELLANT,

vs.

NORTHERN PACIFIC RAILWAY COMPANY ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

FILED NOVEMBER 30, 1910.

(22424)

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1 United States of America. In the Circuit Court of the United States for the District of Minnesota, Third Division.

GREAT NORTHERN RAILWAY COMPANY, NORTHERN Pacific Railway Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad and Navigation Company, and Southern Pacific Company, complainants, *vs.* THE INTERSTATE COMMERCE COMMISSION, defendant.	No. 885. Equity.

Pleas before the honorable the judges of the Circuit Court of the United States of America for the District of Minnesota, Third Division, of the June, A. D. 1910, term of said court, held in said district, in the year of our Lord one thousand nine hundred and ten (1910).

DISTRICT OF MINNESOTA.

Be it remembered that on the 1st day of October, A. D. 1908, came the complainants by their solicitors and counsel and filed in the clerk's office of said court their bill of complaint, which is omitted from this return in view of the subsequent filing of an amended bill of complaint.

And thereupon, upon application of said solicitors, a writ of subpœna was duly issued out of said court and under the seal thereof duly vested, and in the words and figures following, to wit:

2 Circuit Court of the United States, District of Minnesota, Third Division.

NORTHERN PACIFIC RAILWAY COMPANY ET AL. *vs.* INTERSTATE COMMERCE COMMISSION.	

Præcipe for chancery subpœna.

To the clerk of the above-named court:

Please issue chancery subpœna directed to the above-named defendant returnable November rules, 1908.

F. C. DILLARD,
JAMES B. KERR,
HALE HOLDEN,
Solicitors for Complnts.

(Indorsed:) United States Circuit Court, District of Minnesota, Third Division. Northern Pacific Ry. Co. et al. vs. Interstate Com-

merce Commission. Præcipe for chancery subpœna. Order ent. C. R. "C," page 8. Filed October 1st, 1908. Henry D. Lang, clerk.

3 United States Circuit Court, District of Minnesota, Third Division.

Chancery common rule and order book.

NORTHERN PACIFIC RAILWAY COMPANY ET AL.
vs.
INTERSTATE COMMERCE COMMISSION. } Equity No. 884.

1910. Oct. 1st.

The complainants herein having filed a bill in equity in this cause, on application of F. C. Dillard, James B. Kerr, and Hale Holden, solicitors for said complainants, it is hereby ordered that a chancery subpœna issue as therein prayed.

(Entered C. R. "C," page 8.)

4 (Original.)

United States of America, District of Minnesota, Third Division.

The President of the United States of America:

To The Interstate Commerce Commission, greeting:

You are hereby commanded to be and appear at Rules, to be held at the office of the clerk of the Circuit Court of the United States, for the District of Minnesota, on the first Monday of November next, at the city of St. Paul, then and there to answer the bill of complaint of Northern Pacific Railway Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad and Navigation Company, and Southern Pacific Company, citizens of the States of Minnesota, Wisconsin, Illinois, Utah, Oregon, and Kentucky, filed against you on the 1st day of October A. D. 1910; hence fail not.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States the 1st day of October, 1910.

Issued at my office in the city of St. Paul under the seal of said Circuit Court, the day and year last aforesaid.

[SEAL OF COURT.] HENRY D. LANG, *Clerk.*

Memorandum: The above named defendant to enter its appearance in this suit in the clerk's office aforesaid, on or before the day at which this writ is returnable; otherwise the bill may be taken pro confesso.

HENRY D. LANG, *Clerk.*

F. C. DILLARD,
JAMES B. KERR,
HALE HOLDEN,
Complainants' Solicitors.

(Endorsed:) Chancery subpœna, returnable November Rules, 1908. Served copy of within writ on within named defendant by service on E. A. Moseley, its secretary. Oct. 3, 1908. Aulick Palmer, U. S. Marshal Dist. of Columbia.

5 Thereafter and on the 12th day of October the following Appearance was filed by the defendant and the order following entered thereon, to wit:

6 Circuit Court of the United States, District of Minnesota, Third Division.

NORTHERN PACIFIC RY. CO. ET AL. *vs.* INTERSTATE COMMERCE COMMISSION. } No. 884.

Appearance.

The clerk will enter my appearance for the defendant in above entitled case.

LUTHER M. WALTER.

(Indorsed:) United States Circuit Court, District of Minnesota, 3rd Division. Northern Pacific Ry. Co. et al. vs Interstate Commerce Commission. Appearance of Luther M. Walter for deft. Entd. C. R. "C" p. 142.

Filed October 12th, 1908. Henry D. Lang, clerk. By Louise B. Trott, deputy.

7 United States Circuit Court. District of Minnesota, Third Division.

Chancery rule and order book.

NORTHERN PACIFIC RAILWAY CO. ET AL. *vs.* INTERSTATE COMMERCE COMMISSION. } No. 884. Equity.

Oct. 12.

This day comes the defendant by Luther M. Walter, solicitor, on whose motion it is hereby ordered that the appearance of said defendant be, and the same is hereby, entered.

(Entered C. R. "C." page 140.)

Thereafter and on October 16th, 1908, the following certificate of the Attorney General was filed in said cause, to wit:

8 In the Circuit Court of the United States for the District of Minnesota.

NORTHERN PACIFIC RAILWAY COMPANY ET AL.
v.
THE INTERSTATE COMMERCE COMMISSION.

To the clerk of said court:

I hereby certify that the above-entitled cause now pending in said court is a suit in equity brought by the Northern Pacific Railway Company et al. against the Interstate Commerce Commission, under the act of Congress entitled "An act to regulate commerce," as amended by the act of June 29, 1906, and that said suit is in my opinion a case of general public importance.

I therefore request that, complying with the provisions of the act of Congress entitled "An act to expedite the hearing and determination of suits in equity pending or hereafter brought under the act of July 2, 1890, entitled 'An act to protect trade and commerce against unlawful restraints and monopolies,' 'An act to regulate commerce,' approved February 4, 1887, or any other acts having a like purpose that may be hereafter enacted," approved February 11, 1903; and in further compliance with the provisions contained in section 16 of the "Act to regulate commerce," approved June 29, 1906, you will file this certificate among the records of the above-entitled cause, and immediately furnish a copy thereof to each of the circuit judges of the Eighth Circuit, to the end that said case shall be given precedence over other cases in said court, and will be assigned for hearing at the earliest practicable date before not less than three of the circuit judges of said circuit, as is provided by the said act of February 11, 1903.

CHARLES J. BONAPARTE,
Attorney General.

WASHINGTON, D. C., *October 13, 1908.*

9 (Endorsed:) Certificate of the Attorney General under the acts of February 11th, 1903, and June 29th, 1906. Filed October 16th, 1908. Henry D. Lang, clerk.

Thereafter and on the same day the following certificate of H. D. Lang, clerk, was filed in said cause, to wit:

10 United States Circuit Court, District of Minnesota, Third Division.

NORTHERN PACIFIC RAILWAY COMPANY ET AL.
vs.
THE INTERSTATE COMMERCE COMMISSION.

UNITED STATES OF AMERICA, *District of Minnesota.* } ss.

I, Henry D. Lang, clerk of the Circuit Court of the United States for the District of Minnesota, do hereby certify that on the 16th day of October, A. D. 1908, I personally handed to and left with the Honorable Walter H. Sanborn, one of the United States circuit judges for the Eighth Circuit, at St. Paul, Minnesota, a duly certified copy of the certificate of the Attorney General, under the acts of February 11th, 1903, and June 29th, 1906, this day filed in the above entitled cause, and that on the same day I mailed a certified copy to the Honorable Willis Van Devanter, by enclosing a copy thereof in an envelope addressed to him at Cheyenne, Wyoming, and depositing the same in the post office at St. Paul, Minnesota, and that on the same day I also mailed a duly certified copy of said certificate to the Honorable Elmer B. Adams, by enclosing the same in an envelope addressed to him at St. Louis, Missouri, and depositing the same in the post office at St. Paul, Minnesota, and that on the same day I also mailed a duly certified copy of said certificate to the Honorable William C. Hook, by enclosing the same in an envelope addressed to him at Leavenworth, Kansas, and depositing the same in the post office at said St. Paul, Minnesota.

In witness whereof I have hereunto set my hand and official seal this 16th day of October, A. D. 1908.

HENRY D. LANG, *Clerk.*

(Endorsed:) Certificate of Henry D. Lang, clerk of delivery of Attorney General's certificate to U. S. circuit judges. Filed October 16th, 1908. Henry D. Lang, clerk.

11 Thereafter and on October 16th, 22nd, and 27th, the following receipts of the U. S. circuit judges of the Attorney General's certificate were filed in said cause, to wit:

12 United States Circuit Court, District of Minnesota, Third Division.

NORTHERN PACIFIC RAILWAY CO. ET AL.
vs.
THE INTERSTATE COMMERCE COMMISSION.

Received of Henry D. Lang, clerk of the Circuit Court of the United States for the District of Minnesota, a certified copy of the

certificate of the Attorney General of the United States of America under the acts of February 11, 1903, and June 29th, 1906, filed in the above entitled cause October 16th, 1908.

Dated October 16th, 1908.

WALTER H. SANBORN, *Circuit Judge.*

(Endorsed:) Receipt of Hon. Walter H. Sanborn for Attorney General's certificate. Filed October 16th, 1908. Henry D. Lang, clerk.

13 United States Circuit Court of Appeals, Eighth Circuit.

Hon. David J. Brewer, circuit justice, Washington D. C. Hon. Walter H. Sanborn, St. Paul, Minn.; Hon. Willis Van Devanter, Cheyenne, Wyo.; Hon William C. Hook, Leavenworth, Kan.; Hon. Elmer B. Adams, St. Louis, Mo., circuit judges.

ST. LOUIS, Mo., *Oct. 20, 1908.*

HENRY D. LANG, Esq.,
Clerk United States Circuit Court,
St. Paul, Minnesota.

DEAR SIR: I beg to acknowledge receipt of your letter of October 16th, with enclosures. I see no occasion for accepting service in the manner suggested by some of your enclosures as if the proceeding were a suit against the judges individually.

Very respectfully, yours, ELMER B. ADAMS.

(Endorsed:) Receipt of Judge Elmer B. Adams for Attorney General's certificate. Filed October 22nd, 1908. Henry D. Lang, clerk.

14 ST. LOUIS, MISSOURI, *October 19, 1908.*

Mr. HENRY D. LANG,
Clerk, St. Paul, Minnesota.

DEAR SIR: I am in receipt of yours of the 16th inst. enclosing copies of the certificates of the Attorney General in the three cases, Union Pacific Railroad Co., Northern Pacific Railway Co., and Great Northern Railway Co., against the Interstate Commerce Commission, Nos. 883, 884, and 885, in the Circuit Court for the Minnesota District.

Very truly, WILLIAM C. HOOK.

(Endorsed:) Receipt of Judge Wm. C. Hook, for Attorney General's certificate, filed October 22nd, 1908. Henry D. Lang, clerk.

15 ST. PAUL, *October 16th, 1908.*

Hon. WILLIS VAN DEVANTER,
U. S. Circuit Judge, Cheyenne, Wyo.

MY DEAR JUDGE: I hand you herewith a certified copy of the certificate of the Attorney General of the United States of America

under the acts of February 11, 1903, and June 29, 1906, filed to-day in each of the cases of 883, equity, Union Pacific Rd. Co. et al. vs. Interstate Commerce Commission; 884, equity, Northern Pacific Railway Co. et al. vs. Interstate Commerce Commission; and 885, equity Great Northern Railway Co. et al. vs. Interstate Commerce Commission, together with a receipt for each, which kindly sign and return to me.

Yours, very truly, HENRY D. LANG, *Clerk.*

Dictated.

ST. PAUL, *Oct. 28, 1908.*

The above enclosures were received by me to-day, the same having been forwarded from Cheyenne.

WILLIS VAN DEVANTER.

(Endorsed:) Receipt of Judge Van Devanter for certificate of Attorney General. Filed October 27th, 1908. Henry D. Lang, clerk. By Louise B. Trott, deputy.

16 Thereafter and on October 20th, 1908, the following amended bill was filed in said cause, to wit:

17 In the Circuit Court of the United States for the District of Minnesota, Third Division.

NORTHERN PACIFIC RAILWAY COMPANY, Great Northern Railway Company, Chicago, Burlington and Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad and Navigation Company, complainants. *v.* THE INTERSTATE COMMERCE COMMISSION, defendant.	In Equity. No. 884.

Amended Bill of Complaint.

To the Honorable Judges of the Circuit Court of the United States, within and for the District of Minnesota:

Northern Pacific Railway Company, a corporation organized under the laws of the State of Wisconsin, Great Northern Railway Company, a corporation organized under the laws of the
18 State of Minnesota, Chicago, Burlington & Quincy Railroad Company, a corporation organized under the laws of the State of Illinois, Union Pacific Railroad Company, a corporation organized under the laws of the State of Utah, Oregon Short Line Railroad Company, a corporation organized under the laws of the State of Utah, and Oregon Railroad and Navigation Company, a corporation organized under the laws of the State of Oregon, bring this,

their amended bill, against the Interstate Commerce Commission, established and existing under and by virtue of an act of the Congress of the United States.

And thereupon your orators complain and say:

I. That the Northern Pacific Railway Company is a corporation duly organized and existing under and by virtue of the laws of the State of Wisconsin; that the Great Northern Railway Company is a corporation duly organized and existing under the laws of the State of Minnesota; that the Chicago, Burlington and Quincy Railroad Company is a corporation duly organized and existing under the laws of the State of Illinois; that the Union Pacific Railroad Company is a corporation duly organized and existing under the laws of the State of Utah; that the Oregon Short Line Railroad Company is a corporation duly organized and existing under the laws of the State of Utah, and that the Oregon Railroad and Navigation Company is a corporation duly organized and existing under the laws of the State of Oregon; that the defendant, the Interstate Commerce Commission,
19 has been created and established, and during all the times herein mentioned has existed, under and by virtue of an act of the Congress of the United States, entitled "An act to regulate commerce," approved February 4, 1887, and the acts amendatory thereof.

Your orators further show that the Northern Pacific Railway Company has its principal operating office in the city of St. Paul, in the district of Minnesota, third division thereof.

II. Your orators further show that the Northern Pacific Railway Company, Great Northern Railway Company, Chicago, Burlington and Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad and Navigation Company are each common carriers, engaged in the transportation of property by railroad, by continuous carriage or shipment, from points in the State of Washington to points in the States of Montana, North Dakota, South Dakota, Minnesota, Wisconsin, Illinois, Iowa, Missouri, Kansas, Nebraska, Utah, and Colorado, and have been so engaged for many years past, and a large proportion of the property so transported by your orators is and has been lumber, shingles, and other forest products produced at points in the State of Washington. That for the purpose of transporting the lumber, shingles and other forest products so produced in the State of Washington to points of consumption in the States above named, your orators have established and maintained through routes and joint rates over their lines and the lines of connecting railways from said points in the State of Washington to destinations in said other States.

20 III. The rates for the transportation of lumber, shingles, and forest products from points in the State of Washington over the lines of your orators' railways to points thereon in the States above mentioned and to points in said States and other States over lines of connecting railways, which rates were in effect on October 31,

1907, and which had been in effect for a long time before that date, were prescribed in certain tariffs duly filed, published and posted under the provisions of the act entitled "An act to regulate commerce." These tariffs are known and described as follows: S. R. 662, I. C. C. No. 564; G. N. G. F. O. 9838, I. C. C. No. A–1101; G. N. G. F. O. 13051, I. C. C. No. A–1427; G. N. G. F. O. 17526, I. C. C. No. A–2231; G. N. G. F. O. 18025, I. C. C. No. A–2427; G. N. G. F. O. 18837, I. C. C. No. A–2661; Northern Pacific No. 23275, I. C. C. No. A–3095; and Northern Pacific No. 20285, I. C. C. No. B–479, and are too voluminous to be set out in this amended bill of complaint, but true copies thereof have been filed with the original bill of complaint in this cause, and reference thereto is hereby prayed as if the same were made a part of this amended bill of complaint, the said tariffs being marked respectively, Exhibits 1 to 8, inclusive.

IV. That more than thirty days previous to November 1, 1907, your orators, together with a large number of other carriers, filed, published, and posted, in accordance with the provisions of that certain act of Congress, entitled "An act to regulate commerce,"
21 approved February 4, 1887, and the acts amendatory thereof, a certain tariff known as "Transcontinental Freight Bureau East-bound Special Tariff No. S. R. 963, I. C. C. No. 850," with supplements 1 and 2, which became effective November 1, 1907, wherein rates were prescribed for the transportation of lumber, shingles, and forest products from points in the State of Washington to points in North Dakota, South Dakota, Montana, Minnesota, Wisconsin, Iowa, Illinois, Missouri, Nebraska, Arkansas, Louisiana, Texas, Oklahoma, New Mexico, Colorado, Kansas, Utah, and Wyoming, and at or about the same time your orator, Great Northern Railway Company, filed, published, and posted, under the provisions of said act of Congress, a certain local and joint tariff known as "Great Northern I. C. C. No. A–2667," which prescribed the rates for the transportation of lumber, shingles and forest products from points in the State of Washington to points in Oregon, Washington, Idaho, Montana, Alberta, and British Columbia, which said tariff and the rates therein prescribed, became effective on November 1, 1907. And at or about the same time your orator, Northern Pacific Railway Company, filed, published, and posted a certain local and joint tariff prescribing rates for the transportation of lumber, shingles, and forest products from points in the State of Washington to points in Idaho, Montana, and North Dakota, which rates became effective on November 2, 1907, said tariff being I. C. C. No. A–3432.

That said tariffs above described are too voluminous to be set out in this amended bill of complaint; that true copies thereof have been filed with the original bill of complaint in this cause, and reference thereto is hereby prayed, as if the same were made a part of
22 this amended bill of complaint, the said tariff I. C. C. No. 850 being marked "Exhibit 9," the said tariff I. C. C. No. A–2667

being marked "Exhibit 10," and the said tariff I. C. C. No. A-3432 being marked "Exhibit 11."

That in and by said tariffs so filed, published, and posted the articles or commodities therein described were designated as groups A, B, C, and D, and by the terms thereof group A comprised shingles; group B comprised lumber, poles, piling, and timbers of cedar of single car lengths and certain articles manufactured from cedar; group C comprised lumber, poles, piling, and timbers of fir, hemlock, larch, pine, and spruce of single car lengths and certain articles manufactured therefrom; and group D comprised long timbers, poles, piling, or lumber requiring two or more cars for transportation.

V. That the rates named in said tariffs so filed, published, and posted thereupon became, were, and are the only lawful rates for the transportation of the various commodities comprised within said four groups from each and all of the points in the State of Washington named in said tariffs to each and all of the points of destination in said other States named in said tariffs, and said rates, and each and all of them, were, on November 1, 1907, ever since have been and now are low for the service rendered and by comparison with other rates, and as such neither unreasonable nor unjust, and, as your orators verily believe, will continue so to be for the period of two years from October 15, 1908.

23 VI. That as soon as the said rates prescribed by the tariffs above mentioned became effective, two certain proceedings were commenced before the Interstate Commerce Commission, one entitled "Pacific Coast Lumber Manufacturers' Association and others v. Northern Pacific Railway Company and others," being cause No. 1329 before said commission, and the other entitled "Southwest Washington Lumber Manufacturers' Association v. Northern Pacific Railway Company and others," being cause No. 1335. In said cause No. 1329, the Pacific Coast Lumber Manufacturers' Association and others complained against your orators and other carriers parties to said tariffs, and in cause No. 1335, the Southwest Washington Lumber Manufacturers' Association complained against your orators and other carriers, parties to said tariffs, and the complainants in both of said causes alleged that they were engaged in the manufacture and interstate shipment and sale of lumber, shingles, and other forest products from points within to points without the State of Washington, the rates on which were fixed by said tariffs, and alleged that the rates fixed therein for the transportation of such commodities were unreasonable and unjust. Upon the filing of the complaints in said two causes, the defendant Interstate Commerce Commission required your orators and the other carriers named as defendants in said proceedings to answer the complaints of said complainants, and thereupon answers were duly filed by your orators, and upon the issues raised therein evidence was produced before the said

24 Interstate Commerce Commission by such complainants and by your orators, and the matters in difference in said two causes were submitted to the commission on March 20, 1908.

VII. Thereafter, and on June 2, 1908, the defendant Interstate Commerce Commission entered an order in said cause No. 1329 and in said cause No. 1335, which order was in words and figures as follows:

Order.

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 2nd day of June, A. D. 1908. Present: Martin A. Knapp, Judson C. Clements, Charles A. Prouty, Francis M. Cockrell, Franklin K. Lane, Edgar E. Clark, James S. Harlan, commissioners.

No. 1329.

Pacific Coast Lumber Manufacturers' Association, St. Paul & Tacoma Lumber Company, Atlas Lumber & Shingle Company, Page Lumber Company, Day Lumber Company, White River Lumber Company, Three Lakes Lumber Company, Wallace Lumber & Manufacturing Company, Grays Harbor Commercial Company, Tacoma Mill Company, Northwestern Lumber Company, Mel-
25 rose Cedar Shingle Company, Shingle Mills Bureau, J. H. Cavanaugh, and W. R. Burke.

v.

Northern Pacific Railway Company; Great Northern Railway Company; Chicago, Burlington & Quincy Railroad Company; Oregon Railroad & Navigation Company; Oregon Short Line Railroad Company; Union Pacific Railroad Company; Canadian Pacific Railway Company; Minneapolis, St. Paul & Sault Ste. Marie Railway Company; Rio Grande Western Railway Company; Denver & Rio Grande Railroad Company; Chicago & Northwestern Railway Company; Chicago Great Western Railway Company; Minneapolis & St. Louis Railroad Company; Wisconsin Central Railway Company; Lake Shore & Michigan Southern Railway Company; New York Central & Hudson River Railroad Company; Bellingham Bay & British Columbia Railroad Company; Columbia and Puget Sound Railroad Company; Port Townsend Southern Railroad Company; and Tacoma Eastern Railroad Company.

No. 1335.

Southwest Washington Lumber Manufacturers' Association

v.

Northern Pacific Railway Company; Chicago, Burlington & Quincy Railroad Company; Oregon Short Line Railroad Company; Union Pacific Railroad Company; and Oregon Railroad & Navigation Company.

These cases being at issue upon complaint and answers on
26 file, and having been duly heard and submitted by the parties and full investigation of the matters and things involved having been had, and the commission having, on the date hereof, made

and filed a report containing its conclusions thereon, to which report reference is hereby made:

It is ordered, That the said defendants, the Northern Pacific Railway Company; Great Northern Railway Company; Chicago, Burlington & Quincy Railroad Company; Oregon Railroad & Navigation Company; Oregon Short Line Railroad Company; Union Pacific Railroad Company; Canadian Pacific Railway Company; Minneapolis, St. Paul & Sault Ste. Marie Railway Company; Rio Grande Western Railway Company; Denver & Rio Grande Railroad Company; Chicago & Northwestern Railway Company; Chicago Great Western Railway Company; Minneapolis & St. Louis Railroad Company; Wisconsin Central Railway Company; Lake Shore & Michigan Southern Railway Company; New York Central & Hudson River Railroad Company; Bellingham Bay & British Columbia Railroad Company; Columbia & Puget Sound Railroad Company; Port Townsend Southern Railroad Company; and Tacoma Eastern Railroad Company, and each of them, be, and they are hereby, notified and required to cease and desist on or before the 15th day of August, 1908, from enforcing their present rates on interestate shipments of lumber, shingles, and other forest products, from points of origin in Oregon, Washington, Idaho, Montana, and British Columbia to points in various States and Territories east and southeast thereof, excluding those points to which rates are prescribed by the commission in case No. 1054, Pacific Coast Lumber Manufacturers' Asso. et al. v. Northern Pacific Ry. Co. et al., decided June 2, 1908, and in case No. 1331, Western Oregon Lumber Manufacturers' Asso. et al. v. Southern Pacific Co. et al., decided June 2, 1908.

It is further ordered, That said defendants, and each of them, be, and they are hereby notified and required to establish and put in force on or before the said 15th day of August, 1908, and
27 maintain in force thereafter during a period of not less than two years, rates on said interstate shipments of lumber, shingles, and other forest products from said points of origin to said points of destination which shall in no instance exceed the rates on like shipments between the same points which had been duly filed with the commission as required by law, and which were in effect on October 31, 1907, subject to present minimum weight regulations and to the following limitations:

The rates on said lumber, shingles, and other forest products from said points of origin to all points on and west of a line drawn from Pembina, N. Dak., southward through Grand Forks, N. Dak., Moorhead and Breckenridge, Minn., Sioux City and Council Bluffs, Iowa, St. Joseph and Kansas City, Mo., and thence to Port Arthur, Tex., along the Kansas City Southern Railway, also including all points that now take the same rates as any of the points located on said line between and including Sioux City, Iowa, and Kansas City, Mo., and excluding those points to which rates are prescribed in case No. 1054, Pacific Coast Lumber Manufacturers' Asso. et al. v. Northern Pacific Ry. Co. et al., decided June 2, 1908, and in case No. 1331, West-

ern Oregon Lumber Manufacturers' Asso. et al. v. Southern Pacific Co. et al., decided June 2, 1908, which were in effect on October 31, 1907, shall be restored, except that the differentials prescribed in case No. 1348, Potlatch Lumber Co. et al. v. Northern Pacific Ry. Co. et al., decided June 2, 1908, shall be observed; the rates which were in effect on October 31, 1907, from said points of origin to points east of the line mentioned, and excluding all points to which the rates are now the same as to any of the points located on said line between and including Sioux City, Iowa, and Kansas City, Mo., may be increased in no case exceeding 5 cents per 100 pounds, and subject to the differentials prescribed in said case No. 1348.

And it is further ordered that these cases be held open for such supplemental proceedings as it may be necessary for interested parties to institute in respect to reparation.

28 VII. Your orators further show that in said cause numbered 1329, wherein the "Pacific Coast Lumber Manufacturers' Association" and others are complainants, and your orators are defendants, and in said cause numbered 1335, wherein the "Southwest Washington Lumber Manufacturers' Association" is complainant and your orators are defendants, the said defendant Interstate Commerce Commission, on July 27, 1908, by order duly entered, changed and extended the effective date of said orders from August 15 to October 15, 1908, and again on September 1, 1908, said defendant commission entered in said causes a further order as follows, to wit:

Upon further consideration of the record in the above-entitled causes:

It is ordered that the order heretofore entered by the commission in said causes on the second day of June, 1908, and as amended by the order of the commission on the 27th day of July, 1908, changing the effective date thereof from August 15th to October 15th, 1908, be, and the same is hereby, further modified and amended by adding thereto the following:

It is further ordered that permission is hereby granted to defendant carriers to establish on shingles, cedar lumber, and long timbers requiring two or more cars, including with each article grouped therewith, from points of origin to destinations west of the Pembina-Port Arthur line, as defined in the original order herein, as to which no such differential, or a differential of less than 10 cents per 100 lbs., existed prior to November 1, 1907, differentials not exceeding in any instance 10 cents per 100 pounds above the rates on fir lumber between the same points, provided that the differentials prescribed in Case No. 1348, Potlatch Lumber Company et al. v. Northern Pacific Railway Company et al., must be observed.

29 It is further ordered, That the above permission does not constitute sanction for or endorsement of the establishment of higher rates for a shorter haul than for a longer haul in the same direction when the shorter is included within the longer.

IX. Your orators further show that in said cause numbered 1329, wherein the "Pacific Coast Lumber Manufacturers' Association" and others are complainants and your orators are defendants, and in said cause numbered 1335, wherein the "Southwest Washington Lumber Manufacturers' Association" is complainant and your orators are defendants, the said defendant Interstate Commerce Commission, on September 25, 1908, made a further order, as follows, to wit:

Upon further consideration of the record in the above entitled cause,

It is ordered, That the order of September 1, 1908, modifying the original order herein, be, and it is hereby, amended and modified so that it will read as follows:

It is ordered, That the order heretofore entered by the commission in said causes on the 2d day of June, 1908, and as amended by the order of the commission on the 27th day of July, 1908, changing the effective date thereof from August 15 to October 15, 1908, be, and the same is hereby, further modified and amended by adding thereto the following:

It is further ordered, That permission is hereby granted to defendant carriers to establish on shingles, cedar lumber, and long timbers requiring two or more cars, including with each articles grouped therewith, from points of origin to destinations west of the Pembina-Port Arthur Line, as defined in the original order herein,

as to which no such differential, or a differential of less than
30 10 cents per 100 pounds, existed prior to November 1, 1907,

differentials not exceeding in any instance 10 cents per 100 pounds above the rates on fir lumber between the same points, provided that the differentials prescribed in case No. 1348, Potlatch Lumber Company et al. v. Northern Pacific Railway Company et al., must be observed.

It is further ordered, That all increases made under this order in said differentials above those in effect on October 31, 1907, shall become effective on October 15, 1908, and that as to all shipments which moved subsequent to October 31, 1907, and prior to October 15, 1908, the rates prescribed in the original order herein shall be applied.

It is further ordered, That the above permission does not constitute sanction for or endorsement of the establishment of higher rates for a shorter haul than for a longer haul in the same direction when the shorter is included within the longer.

X. Your orators further show that the orders in cause No. 1054, entitled "Pacific Coast Lumber Manufacturers' Association et al. v. Northern Pacific Railway Company et al.," and in cause No. 1331, entitled "Western Oregon Lumber Manufacturers' Association et al. v. Southern Pacific Company et al.," and in said cause No. 1348, entitled "Potlatch Lumber Company et al. v. Northern Pacific Railway Company et al.," referred to in the order so entered by the defendant commission in causes 1329 and 1335, are as follows, to wit:

COPY POUND CL

31 Order.

At a general session of the Interstate Commerce Commission held at its office in Washington, D. C., on the 1st day of June, A. D. 1908:

Present: Martin A. Knapp, Judson C. Clements, Charles A. Prouty, Francis M. Cockrell, Franklin K. Lane, Edgar E. Clark, James S. Harlan, Commissioners.

No. 1054.

PACIFIC COAST LUMBER MANUFACTURERS' ASSOCIATION, SOUTHWESTERN Washington Lumber Manufacturers' Association, and Shingle Mills Bureau

v.

NORTHERN PACIFIC RAILWAY COMPANY; GREAT NORTHERN RAILWAY Company; Northern Pacific Terminal Company of Oregon; Oregon Railroad & Navigation Company; Oregon Short Line Railroad Company; Union Pacific Railroad Company; Oregon & California Railroad Company; Southern Pacific Company; Rio Grande Western Railway Company; Denver & Rio Grande Railroad Company; Colorado Midland Railway Company; Colorado & Southern Railway Company; Chicago, Burlington & Quincy Railway Company; Chicago, Rock Island & Pacific Railway Company; Atchison, Topeka & Santa Fe Railway Company; Missouri Pacific Railway Company; Leavenworth, Kansas & Western Railway Com-
32 pany; St. Joseph & Grand Island Railway Company; Kansas City Northwestern Railroad Company; and Chicago & Northwestern Railway Company.

This case being at issue upon complaint and answers on file and having been duly heard and submitted by the parties and full investigation of the matters and things involved having been had, and the commission having, on the date hereof, made and filed a report containing its conclusions thereon:

It is ordered, That the defendants, the Northern Pacific Railway Company, the Northern Pacific Terminal Company of Oregon, the Oregon Railroad & Navigation Company, the Oregon Short Line Railroad Company, and the Union Pacific Railroad Company, be, and they are hereby, notified and required to establish, on or before the 15th day of August, 1908, between their respective lines of transportation, and maintain in operation for a period of not less than two years from said 15th day of August, through routes for the transportation of fir lumber, cedar lumber, spruce lumber, and shingles from points on the lines of the Northern Pacific Railway Company in Washington north of Portland, Ore., through said Portland to Ogden and Salt Lake City, Utah, and common points in Utah; and also are required to establish and put in force on or before the said 15th day of August, and for a period of at least two years

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thereafter maintain a joint through rate not exceeding 40 cents per 100 pounds in carloads for the transportation of fir lumber and spruce lumber between said points, and a rate not exceeding 50 cents per 100 pounds in carloads for the transportation of cedar lumber and shingles between said points; and the said defendants are hereby authorized to make said joint rates effective upon three days' notice to the public and the commission, given in the manner required by law. The joint tariff must contain the notation
33 that it is issued under the authority hereby granted, and must refer to the title and number of this case.

It is further ordered, That as to the establishment of a through route and joint rate applicable to the movement of lumber and shingles from western Washington through said Portland over the lines of the Northern Pacific Railway Company and the Great Northern Railway Company and the Union Pacific System to other named eastern destinations the complaint in this proceeding be, and it is hereby, dismissed.

Order.

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 1st day of June, A. D. 1908.

Present: Martin A. Knapp, Judson C. Clements, Charles A. Prouty, Francis M. Cockrell, Franklin K. Lane, Edgar E. Clark, James S. Harlan, commissioners.

No. 1331.

Western Oregon Lumber Manufacturers' Association, Willamette Valley Lumber Company, Falls City Lumber Company, Curtiss Lumber Company, Charles K. Spaulding Logging Company, Booth-Kelly Lumber Company, J. H. Chambers, H. M. Parvin, and Cruzan Brothers, complainants; and Inman-Poulsen Lumber Company, Oregon & Washington Lumber Company, East Side Mill & Lumber Company, Standard Box and Lumber Com-
34 pany, Jones Lumber Company, and St. Johns Lumber Company, interveners,

v.

Southern Pacific Company and Oregon & California Railroad Company.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the commission having, on the date hereof, made and filed a report containing its conclusions thereon:

It is ordered, That the defendants, the Southern Pacific Company and the Oregon & California Railroad Company be, and they are hereby, notified and required to cease and desist, on or before the

15th day of August, 1908, from charging, demanding, collecting, or receiving for the transportation of rough green fir lumber and lath, in carloads, their present rate of $5 per ton from points upon the east bank of the Willamette River, in the State of Oregon, and upon the west bank thereof, south of Corvallis, Oregon, and upon the west bank of said river north of said Corvallis to San Francisco, Cal., and bay points.

It is further ordered, That said defendants be, and they are hereby, notified and required to establish and put in force on or before the said 15th day of August, 1908, and maintain in force thereafter during a period of not less than two years, and apply to the transportation of rough green fir lumber and lath, in carloads, a rate not exceeding $3.40 per ton from points upon the east bank of said Willamette River and upon the west bank thereof south of said Corvallis to San Francisco, Cal., and bay points, and a rate not exceeding $3.65 per ton from points upon the west bank of said river north of said Corvallis to said San Francisco bay points, not including in either rate Portland, Oregon, as a point of origin.

35 And it is further ordered, That said defendants be, and they are hereby, authorized to make effective upon three days' notice to the public and the Interstate Commerce Commission, given in the manner required by law, such rates as it may be necessary for said defendants, or either of them, to establish for the purpose of complying with this order. The schedules containing such rates must bear the notation that said rates are issued under the authority hereby granted, and must refer to the title and number of this case.

Order.

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 2nd day of June, A. D. 1908.

Present: Martin A. Knapp, Judson C. Clements, Charles A. Prouty, Francis M. Cockrell, Franklin K. Lane, Edgar E. Clark, James S. Harlan, commissioners.

No. 1348.

Potlatch Lumber Company; St. Joe Lumber Company; B. R. Lewis Lumber Company; McGoldrick Lumber Company; Lamb-Davis Lumber Company; Fidelity Lumber Company; Washington Mill Company; Orrin S. Good; National Lumber Company; Cascade Lumber Company; Springston Lumber Company; Wm. Musser Lumber & Manufacturing Company; Phoenix Lumber Company; Standard Lumber Company; Karamin Lumber Company; E. A. Humphrey and J. R. Humphrey, Partners Doing Business Under the Name of the Elkhorn Saw Mills; Burkeye Lumber
36 Company; Lindsley Brothers Company; W. H. Gerhart-Bradrick Lumber Company, a Co-partnership Composed of W. H. Gerhart and A. V. Bradrick; S. H. & L. Lumber Company, a Co-

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partnership Composed of G. W. Shaw, J. J. Herlihy, and A. W. Lammert; Idaho Pole Company, a Co-partnership Composed of W.L. Beckwith and John H. Fowler; Chewelah Mill Company; Reeves-Farrell Lumber Company; Post Falls Lumber & Manufacturing Company; Laclede Lumber Company; Bonners Ferry Lumber Company; Dehlbohm Lumber Company; Humbird Lumber Company; Dover Lumber Company; Sand Point Lumber & Pole Company; Barber Lumber Company; Overland Lumber Company; Panhandle Lumber Company, Limited; George Palmer Lumber Company; Grande Ronde Lumber Company; Stoddard Brothers Company; Shockley & McMurren Lumber Company; Goodnough Mercantile & Stock Company; Summerville Lumber Company; Wisconsin-Oregon Lumber Company; and Empire Lumber Company,

v.

NORTHERN PACIFIC RAILWAY COMPANY; GREAT NORTHERN RAILWAY Company; Chicago, Burlington & Quincy Railroad Company; Spokane Falls & Northern Railway Company; Columbia & Red Mountain Railway Company; Kootenai Valley Railway Company; Red Mountain Railway Company; Southern Pacific Company; Union Pacific Railroad Company; Oregon Short Line Railroad Company; Oregon Railroad & Navigation Company; Chicago & Northwestern Railway Company; Chicago, Milwaukee & St. Paul Railway Company; Canadian Pacific Railway Company; Spokane-International Railway Company; Coeur D'Alene & Spokane Railway Company, Limited; Spokane & Inland Railway Company; Minneapolis, St. Paul & Sault Ste. Marie Railway Company; Idaho & Washington Northern Railroad Company; and Chicago, Milwaukee & St. Paul Railway Company of Washington, Defendants; Oregon & Washington Lumber Manufacturers' Association, Intervener.

This case being at issue upon complaints and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the commission having, on the date hereof, made and filed a report containing its conclusions thereon:

It is ordered, That said defendants, except the Chicago, Milwaukee and St. Paul Railway Company of Washington, are hereby notified and required to cease and desist on or before the 15th day of August, 1908, from enforcing their present relation of rates on interstate shipments of lumber, shingles, and other forest products from points of origin in Washington, Oregon, Idaho, and Montana, to points in various States and Territories east and southeast thereof, excluding those points to which rates are prescribed by the commission in case No. 1054, Pacific Coast Lumber Manufacturers' Asso. et al. v. Northern Pacific Ry. Co. et al. and case No. 1331, Western Oregon Lumber Manufacturers' Asso. et al. v. Southern Pacific Co. et al.

It is further ordered, That said defendants and each of them, except the Chicago, Milwaukee & St. Paul Railway Company of Washington, be, and they are hereby, notified and required to establish and put in force on or before the said 15th day of August, 1908, and maintain in force thereafter during a period of not less than two years rates on said interstate shipments of lumber, shingles, and other forest products in accordance with the following differentials:

Rates from the group of points east of the summit of the Cascade Mountains and west of the present "Spokane Rates" group to points on and west of a line drawn from Pembina, N. Dak., southward
38 through Grand Forks, N. Dak., Moorhead and Breckenridge, Minn., Sioux City and Council Bluffs, Iowa, St. Joseph and Kansas City, Mo., and thence to Port Arthur, Texas, along the Kansas City Southern Railway, including all points that now take the same rates as any of the points on that line between and including Sioux City, Iowa, and Kansas City, Mo., shall be less than the rates prescribed by the commission in cases No. 1327, Oregon & Washington Lumber Manufacturers' Asso. et al. v. Union Pacific R. R. et al.; No. 1329, Pacific Coast Lumber Manufacturers' Asso. et al. v. Northern Pacific Ry Co. et al., and No. 1335, Southwest Washington Lumber Manufacturers' Asso. v. Northern Pacific Ry. Co. et al.; from the "Coast Rates" group, by differentials beginning at not less than 2 cents per 100 pounds, and graded up westwardly (a) to a differential of not less than 6 cents per 100 pounds at Buford, N. Dak., on the line of the Great Northern Railway; (b) to a differential of not less than 6 cents per 100 pounds at Medora, N. Dak., on the line of the Northern Pacific Railway; (c) to a differential of not less than 6 cents per 100 pounds at Edgemont, S. Dak., on the line of the Chicago, Burlington & Quincy Railroad; (d) to a differential of not less than 6 cents per 100 pounds at Cheyenne, Wyo., on the line of the Union Pacific Railroad; (e) and to a differential of not less than 6 cents per 100 pounds at Denver, Colo., on the line of the Union Pacific Railroad.

Rates from the present "Spokane Rates" group and from the present "Montana-Oregon" rates group to points on the west of said north and south line, Pembina-Port Arthur, including all points that now take the same rates as any of the points on that line between and including Sioux City, Iowa, and Kansas City, Mo., shall be less than the "Coast Rates," as prescribed in the cases specified, by differentials beginning at not less than 3 cents per 100 pounds and graded up westwardly therefrom to a differential of not less than 7 cents per 100 pounds at Buford, N. Dak., Medora, N. Dak., Edgemont, S. Dak., Cheyenne, Wyo., and Denver, Colo., as described in the preceding paragraph.

39 Rates from the group of points east of the summit of the Cascade Mountains and west of the present "Spokane Rates" group to points east of said line, Pembina-Port Arthur, and excluding all points to which the rates are now the same as to any of the points located on said line between and including Sioux City, Iowa, and Kansas City, Mo., shall be less than the "Coast Rates," as prescribed

in the cases specified, by a differential of not less than 2 cents per 100 pounds up to and including Duluth, Minneapolis, St. Paul, and Minnesota Transfer, Minn., and from the Missouri River crossings to the Mississippi River crossings.

Rates from the said "Spokane Rates" group and the "Montana-Oregon" rates group, as those groups now exist, to points east of said line, excluding all points to which the rates are now the same as to any of the points located on said line between and including Sioux City, Iowa, and Kansas City, Mo., shall be less than the "Coast Rates," as prescribed in the cases specified, by a differential of not less than 3 cents per 100 pounds up to and including Duluth, Minneapolis, St. Paul, and Minnesota Transfer, Minn., and from the Missouri River Crossings to the Mississippi River crossings.

And it is further ordered, That as to the Chicago, Milwaukee & St. Paul Railway Company of Washington the complaint in this proceeding be, and it is hereby, dismissed.

40 XI. And your orators further show that the defendant Interstate Commerce Commission on the 1st day of September, 1908, in said cause No. 1054, entitled "Pacific Coast Lumber Manufacturers' Association, et al., v. Northern Pacific Railway Company, et al.," entered a further order as follows, to wit:

Upon further consideration of the record in the above-entitled cause:

It is ordered, That the order heretofore entered herein by the commission on the first day of June, 1908, and as amended by the order of the commission entered on the 27th day of June, 1908, changing the effective date of said order from Aug. 15, 1908, to Oct. 15, 1908, be further modified and amended so as to read as follows:

It is ordered, That, as the defendants, the Northern Pacific Railway Company, the Northern Pacific Terminal Company of Oregon, the Oregon Railroad & Navigation Company, the Oregon Short Line Railroad Company, the Union Pacific Railroad Company, and the Denver & Rio Grande Railroad Company, have failed and neglected to voluntarily establish a through route for the transportation of forest products between the points hereinafter named, and as no reasonable or satisfactory through route now exists between said points, that said defendants last named be, and they are hereby required on or before the 17th day of October, 1908, to establish, and maintain in operation for a period of not less than two years thereafter, through routes through Portland, Ore., over their respective lines of railroad for the through transportation of fir and spruce lumber, shingles, cedar lumber, and long timbers requiring two or more cars, including with each commodity named other forest

41 products grouped therewith in the tariff hereinafter mentioned, from all points in Washington on the line of the Northern Pacific Railway Company as far north as Seattle and not east of Palmer, Wash., excluding points south and east of Seattle having rail connection with Seattle only by junction points north of Seattle,

to Salt Lake and Ogden, Utah, and to all other points in Utah taking same rates as Salt Lake and Ogden on shipments of forest products from Portland, Ore., as shown by Transcontinental Freight Bureau Tariff I. C. C. No. 564 and supplements thereto.

It is further ordered, That the Northern Pacific Railway Company, the Northern Pacific Terminal Company of Oregon, the Oregon Railroad & Navigation Company, the Oregon Short Line Railroad Company, the Union Pacific Railroad Company, and the Denver & Rio Grande Railroad Company be, and they are hereby, notified and required to establish and put in force on or before the 17th day of October, 1908, and maintain for a period of two years thereafter, joint through rates applicable to said through routes on the forest products hereinafter named, including with each other forest products grouped therewith in the tariffs last above mentioned, from all points of origin on said through routes to all destinations above named, which said joint through rates shall in no case exceed the following scale in cents per hundred pounds:

Fir and spruce lumber in carloads	$0.40
Shingles, in carloads	.50
Cedar lumber	.50
Long timbers requiring two or more cars	.50

subject, however, to present minimum weight regulations.

It is further ordered, That in establishing joint rates on the forest products above named applicable to the through routes hereinbefore ordered between the respective points of origin and destinations mentioned, said defendants shall in no case make said joint through rates more than 2½ cents per 100 pounds higher than the rates on the same forest products from Portland, Ore., to said destinations.

42 It is further ordered, That the above order does not constitute sanction for or endorsement of the establishment of higher rates for a shorter haul than for a longer haul in the same direction via the same line when the shorter is included within the longer.

It is further ordered, That said defendants are hereby authorized to make said joint rates effective upon three days' notice to the public and the commission, given in the manner required by law. The joint tariff must contain notation that it was issued under the authority hereby granted and must refer to the title and number of this case.

It is further ordered, That as to the establishment of a through route and joint rate applicable to the movement of lumber and shingles from western Washington through said Portland, Ore., over the lines of the Northern Pacific Railway Company, the Great Northern Railway Company, and the Union Pacific System to other named eastern destinations, the complaint in this proceeding be, and it is hereby, dismissed.

XII. Your orators further show that the effect of the orders so entered by the defendant in said Cause 1329 and 1335, if enforced, will be to reduce the rates fixed by the tariffs of your orators for the transportation of lumber, shingles, and forest products from points

within the State of Washington to points in the other States above mentioned, substantially five cents (5c) a hundred pounds, and in some instances more than five cents a hundred pounds.

XIII. Your orators aver and charge that in making said order and endeavoring to establish said rates, said commission acted without warrant of law; that the said act of 1887 to regulate commerce, and the several acts amendatory thereof and supplementary thereto,
43 particularly the amendment of June 29, 1906, popularly known as the Hepburn bill, under which said commission professed to act, are in violation of the Constitution of the United States in that they profess to confer upon said commission executive, legislative, and judicial powers. More specifically pleading in this behalf, your orators say: All through said acts administrative powers are conferred upon the commission. In section 15 the commission is authorized to act as a court, to take judicial cognizance of complaints filed for damages, and after hearing to award damages, which award establishes a prima facie right in the complainant, and which no carrier against whom the award has been made can resist except by assuming the burden of proof and overthrowing the prima facie effect of the commission's award. The award can be resisted only under penalty of the carriers paying not only the usual costs of suit but an attorney's fee to complainant in addition if cast in the action.

By section 15 of said act, said commission is authorized and empowered, after a hearing upon complaint, whenever in its opinion any rate or charge demanded charged or collected by any carrier subject to the act is unjust or unreasonable, or unjustly discriminatory, or unduly preferential or prejudicial, to determine and prescribe what will be the just and reasonable rate or charge to be thereafter observed in such case as the maximum to be charged, and to make an order that the carrier shall cease and desist from demanding, charging, or collecting the rate or charge complained of and condemned by said commission, and shall not thereafter, for a period not exceeding two years, publish, demand, or collect any rate or charge in
44 excess of the maximum rate or charge so prescribed by said commission as a substitute for the rate or charge condemned.

Under the provisions of said section and of section 13 of the act, in which the complaint containing a statement of the charges made is more particularly provided for, the commission is empowered to proceed, and the proceeding itself is against the particular carrier or carriers, and such carrier or carriers only as are charged with unreasonableness in the matter of its or their rates; and upon hearing and trial of such carrier or carriers in said proceeding, the said commission, under the aforesaid sections, is authorized to adjudge the rate or charge of said particular carrier or carriers to be unreasonable, and as a consequence thereof to adjudge against said particular carrier or carriers another different and lower rate as the maximum to be charged by such particular carrier or carriers in such case, for a period not exceeding two years. Such proceedings, hearing, trial, determination, and judgment involve and require the exer-

cise of judicial power by the said commission, and it is not competent to Congress to invest said commission with such power; and any investiture, distribution, or exercise of such power in, to, or by said commission is in violation of the Constitution of the United States, and particularly so much thereof as provides for the distribution and exercise of the judicial authority of the United States; and herein reference is made to section 1 of Article III of the Constitution of the United States; and the commission has and possesses no such judicial power.

Further pleading as to that provision of section 15 of the act to regulate commerce, as amended, which declares that the com-
45 mission shall prescribe what shall be the reasonable rate or rates, charge or charges, to be observed as the maximum to be charged, your orators say this provision is contrary to the Constitution of the United States, and especially to section 1, Article I, above quoted, in that, by that article all legislative power is confined to the Congress of the United States. The prescribing of a maximum rate which carriers may charge is a legislative function. Congress has not prescribed a maximum rate to govern in the cases provided for, but by said act delegates this power to the commission, and in doing so places in its hands legislative power.

XIV. Your orators aver that in and by section 1 of the said act to regulate commerce it is provided that all charges made by any common carrier subject to the act, for any service rendered or to be rendered in the transportation of property, or in connection therewith, shall be just and reasonable, and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful. That your orators, as the owners and operators of the railroads herein above described, and the franchises, equipment, and appurtenances connected with such railroads, are entitled to the possession, management, and beneficial use thereof, and are authorized to establish rates for the transportation of freight thereover, subject only to the provision that such rates shall be just and reasonable. In and by section 15 of the said act the Interstate Commerce Commission is authorized and empowered, after hearing upon complaint, whenever it shall be of the opinion that any of the rates or charges demanded or charged or collected by any common
46 carrier for the transportation of property as defined in the first section of the act are unjust or unreasonable or otherwise in violation of any of the provisions of the act to determine and prescribe what will be a just and reasonable rate or rates, charge or charges, to be thereafter observed in such case as the maximum to be charged, and to make an order that the carriers shall cease and desist from such violation to the extent that the commission find the same to exist, and shall not thereafter publish, demand, or collect any rate or charge for such transportation in excess of the maximum rate or charge so prescribed. That in and by said section 15 of said act it is provided that all orders of the commission prescribing rates shall take effect within a reasonable time, and not less than 30 days

after the making of the same, and shall continue in force for such period, not exceeding two years, as established and prescribed by the order of the commission, unless the same shall be suspended or modified or set aside by the commissioners, or be suspended or set aside by a court of competent jurisdiction. That in and by the 16th section of the said act it is provided that any carrier or any officer or agent of any carrier who knowingly fails or neglects to obey any order of the commission prescribing rates as provided in said section of the act, shall forfeit to the United States the sum of $5,000 for each offense, and that each distinct violation shall be deemed a separate offense, and in case of continuing violation each day shall be deemed a separate offense.

Your orators aver that the present rates attempted to be set aside by said order, but fixed and established by your orators for the transportation of lumber, shingles, and other forest products from
47 points aforesaid mentioned in the order of the said commission, and each of the said rates, are and will be for more than three years hence low, just, and reasonable rates for the service performed in the transportation of said commodities between said places and each of them, and that the rates prescribed by the commission in and by its order are, and each of said rates is and will be for more than three years hence, unjust and unreasonable for the service performed in the transportation of lumber, shingles, and other forest products and are and will be inadequate compensation to your orators for the service rendered.

Your orators aver that by Article V of the amendments to the Constitution of the United States your orators have the right to a judicial investigation in a court by due process of law, under the forms and with the machinery provided by the wisdom of successive ages for the investigation judicially of the truth of the matter in controversy of the question as to the reasonableness of the said rates so fixed and established by your orators, and of the question as to the reasonableness of the said rates so fixed and established by the said commission as aforesaid, and of each of said questions.

That the attempt of the commission in and by said order sought to be set aside herein, to set aside and annul the rates established by your orators, and the establishing of the said rates prescribed by said orders and each of them by the said commission, against the will of your orators was pro tanto the taking of the property of your orators and depriving your orators thereof without due process of law, in violation of Article V of the amendments to the Constitution of the United States; and that the making of the said order of the
48 commission herein set out was pro tanto a taking and depriving the company of its property without due process of law, in violation of Article V of the amendments to the Constitution of the United States, and thereby void and of no effect.

Your orators further aver that the attempt of sections 15 and 16 of the said interstate commerce act to make any order of the commission prescribing rates to be charged for the transportation of property

became effective of its own force prior to a hearing in a court of justice of the question of the reasonableness of the rates prescribed by said order, and said sections 15 and 16 in that regard are void for the reason that in and by section 1, Article III, of the Constitution of the United States, all judicial power is conferred upon a Supreme Court of the United States and such inferior courts as Congress may establish, and the judges of said Supreme Court and such inferior courts shall hold office during good behavior, and the said commission has no power to prescribe any time upon which any order of the said commission prescribing rates for the transportation of property to take effect, and that the said order of the said commission is void and of no effect.

That section 16 of said act is unconstitutional and void in that it is therein provided that your orators, and each of them, and any officer or agent of your orators, knowingly failing or neglecting to obey the said order of the commission herein set forth, shall forfeit to the United States the sum of $5,000 for each day that your orators or said officers or agents fail to obey said order, notwithstanding that the question of the reasonableness of the rates established by the said order has not been judicially investigated by due process of
49 law in any court of justice, and in that said section makes said order a finality unless suspended by the commission or by some court of competent jurisdiction, and subjects your orators to penalties and forfeitures as therein provided, and deprives your orators of their property without due process of law, contrary to Article V of the amendments to the Constitution of the United States, and the force and effect of said order sought to be enjoined and set aside herein has been to compel your orators, in order to prevent their property from being forfeited through the operation of such penalties and to save the agents of your orators from being subjected to such penalties (notwithstanding such penalties are only imposed because of said orders of said commission attempting to prescribe and establish such rates), to publish and put into effect on October 15, 1908, the unreasonably low rates so attempted to be prescribed by said commission in and by said order, whereby your orators aver that their property has been and is now being taken from them against their will, and without due process of law, and without their having had a day in court and the right to a judicial investigation by a court under due process of law for the determination of the truth of the matter in controversy before said commission.

XV. Your orators further show that the only authority sought to be vested in the defendant, Interstate Commerce Commission, to fix rates for the transportation of property over the lines of your orators' railways is conferred by said section fifteen of said amended act of Congress, approved June 29, 1906, by the terms whereof it is provided that whenever the said commission shall, after a
50 full hearing, be of the opinion that any of the rates or charges demanded, charged, or collected by any common carrier or

carriers, subject to the provisions of said act, for the transportation of property are unjust or unreasonable, it shall be authorized "to determine and prescribe what will be the just and reasonable rate or rates, charge or charges, to be observed in such case as the maximum to be charged," and your orators further show that the said order so entered in said causes No. 1329 and 1335, on June 2, 1908, and the said orders amendatory thereof are further unauthorized and void, for the reason that your orators have at no time prescribed rates for the transportation of lumber, shingles, or forest products between the points named in said order in excess of charges which are just and reasonable. And furthermore, upon the hearing before the defendant in said causes, in which said order was so entered, no evidence was considered or offered which in any wise showed or tended to show that the rates complained of therein were excessive, unjust, or unreasonable, and the defendant, Interstate Commerce Commission, entered its said order without any justification therefor, and without any evidence or finding of fact that said rates so fixed by said defendant were excessive, unjust, or unreasonable.

XVI. Your orators further show that the rates for the transportation of lumber, shingles, and forest products from points within to points without the State of Washington, as fixed by the said tariffs, so in effect, on October 31, 1907, were substantially the same rates that were fixed by your orators in the year 1893 and solely by
51 reason of the fact that said rates had been long continued was the conclusion reached by the defendant, Interstate Commerce Commission, that the rates complained of in said causes 1329 and 1335, which were and are higher than the rates theretofore in effect, were unreasonable and unjust, and solely by reason of this fact was said orders so entered by the commission, but your orators show that it was established by uncontradicted evidence upon the hearing before the commission that the circumstances and conditions which existed at the time said previous rates were established did not exist on November 1st or 2nd, 1907, and did not exist at the time of said hearing, and had not existed for more than three years prior thereto. That it was established at the hearing before the defendant commission by uncontradicted evidence that at the time said previous rates were established the condition of the lumber market in the United States was such that the lumber product of the State of Washington could not move to other States in any considerable quantity at rates higher than those so established, but that the conditions in this respect have been gradually changing by reason of the exhaustion of the timber supply in Michigan, Minnesota, and Wisconsin and the rapid increase in the value of the yellow pine product of the Southern States, so that it was established at said hearing by uncontradicted evidence that for a period of at least three years before November 1st, 1907, the occasion for maintaining rates so low as those established in 1893 had ceased. And your orators further aver that the said defendant commission in the determination of the issues involved

in said complaint expressly found that in and prior to the year
52 1893 the lumber interests in the States of Washington and Oregon were in their infancy, and, except for purely local consumption, mills located therein disposed of their surplus at points reached by water transportation, and that the volume of business was small for a considerable time, even after the railroads of your orators reached the coast; that prior to the year 1893 the rates on lumber and forest products from said States to Omaha, St. Paul, and other eastern destinations were higher than the rates established in 1893, and that under said higher rates little, if any, of the lumber in said States moved eastward to said eastern destinations; at that time and for several years thereafter and until the practical disappearance of competition with white pine lumber manufactured in Wisconsin, Minnesota, and Michigan manufacturers of lumber in Washington and Oregon were unable to meet the competition of southern yellow pine and northern white pine in the States hereinbefore referred to, but that following upon the reduction in said rates inaugurated in 1893 the lumber interests in said States of Oregon and Washington increased enormously and many mills were built in the interior, so that at and for several years prior to the hearing of said complaint shipments were and had been constantly made in large amounts eastward by the lines of your orators to eastern markets, amounting to a large percentage of the output of said mills; and your orators further aver that it was expressly found to be a fact by the defendant commission that during the period of time that elapsed after the reduction in said rates in 1893 down to the time of said hearing in the State of Washington the price of manufactured lumber had greatly increased with increasing profits to the
53 manufacturer, resulting from the market thus secured to him through said reduced rates, and the general advance in price in said markets during the years aforesaid, and the generally prosperous conditions surrounding the manufacture and sale of lumber in the States hereinbefore referred to, whereby your orators aver that the commission found that each and every of the conditions surrounding the lumber industry had completely changed from the time said rates were established in 1893, and that the prosperous condition of said industry on and for more than three years prior to November 1, 1907, did not require or justify the further maintenance of rates so low as those established in 1893, under the circumstances aforesaid. It was also shown by uncontradicted evidence at said hearing that your orators established and maintained the rates in effect before November 1st, 1907, for the reason that in 1893, and for many years thereafter, the great volume of traffic moving over your orators' lines of railway was west-bound, and the State of Washington and the neighboring territory furnished insufficient traffic to load east-bound the cars employed in moving the west-bound traffic, and that the rates on lumber, shingles, and forest products were so fixed and at an abnormally low point to furnish loads for cars which would have otherwise moved east without revenue

producing freight, but that for some time before November 1st, 1907, the conditions had so changed that it was necessary to haul empty cars to the State of Washington in order to furnish facilities for the movement of lumber, shingles, and forest products. It was also shown at said hearing by uncontradicted evidence that every other important element in the cost of transporting the commodities
54 in question had greatly increased over the cost in 1893 and subsequent years. And your orators further aver that the defendant commission expressly found in its determination of said complaints that in the year 1893, when said low rates were established, the empty car movement on the lines of your orators was east-bound, and that at that time and for some years thereafter the great volume of traffic moving over your orators' lines of railway was west-bound; but your orators aver that said commission also found that this condition in and about the transportation of lumber from the States of Oregon and Washington had likewise changed since said rates were established in that at and for several years prior to the hearing of said complaint the direction of the empty car movement on the lines of your orators has been reversed and the same is now west-bound, and that your orators are now and for several years prior to November 1, 1907, have been compelled to haul west-bound large numbers of empty cars for the purpose of furnishing equipment in the States of Oregon and Washington for the loading of lumber east-bound into the States hereinbefore referred to, where said lumber is now sold. And your orators further aver that the commission not only expressly found that the volume of lumber shipped during the last few years over the lines of your orators east-bound had enormously increased, and that the lumber interests engaged in said traffic have been extraordinarily prosperous in the past few years, but also found that the density of traffic on the lines of your orators has increased to such an extent that it is more than can be advantageously handled on single-track roads such as the lines of your orators practically are, and that because of the increase
55 in density of traffic aforesaid your orators have been compelled to and are now engaged in constructing double-track extensions in some cases, in order more advantageously and expeditiously to handle this increased traffic. Your orators further aver that the commission found that the expense of operating railways has increased greatly in the past few years, especially the cost of labor and materials, over and above the expense of operation as it existed at and for a few years after the year 1893, and further found that the increased traffic of your orators has required additional working force and equipment, thus recognizing and establishing the contention of your orators that in the matter of the transportation of lumber from the State of Washington the conditions had greatly changed from the conditions in force at the time said rates were established in 1893.

Your orators further show that the conditions with respect to the transportation of the commodities in question so existing on Novem-

ber 1st, 1907, and for several years before that time, continued to the time of said hearing, as was shown by the uncontradicted evidence there produced, and, as your orators are informed and believe, will continue for at least a period of two years from October 15, 1908. Your orators further show that notwithstanding the fact that it was so conclusively established at said hearing before the defendant commission that such rates maintained by your orators before November 1st, 1907, were established and maintained under conditions wholly different from those existing at the time the rates complained of took effect and at the time of the hearing, the defendant, Interstate Commerce Commission, held as a matter of law that the continuance of said previous rates raised a presumption that such higher
56 rates were unjust and unreasonable, wherein said commission acted erroneously and through a mistake and under a misapprehension of the law and without authority.

XVII. Your orators further show that the rates so fixed by the tariffs so becoming effective on November 1st and 2nd, 1907, are lower than the rates charged for any like service by any carriers in the United States, and lower than rates heretofore fixed by the defendant, Interstate Commerce Commission, for like services. The rates so fixed by said order are unremunerative and confiscatory in that while it is not possible to accurately compute the actual cost involved in transporting a car of lumber from the State of Washington to eastern destinations, nevertheless it is possible with substantial accuracy to determine whether or not the transportation of lumber aforesaid may be conducted without loss under the rates so fixed by said order, and your orators upon information and belief aver that the rates so fixed by said order are not and will not be sufficient to pay the cost of conducting the transportation aforesaid and any just or fair return upon the value of the property used in said transportation, and said rates so fixed by said order aforesaid bear no fair or just relation to the rates on other traffic moving over your orators' lines of railway, and the enforcement of said order of the defendant will impose an undue and unreasonable burden not only upon your orators but upon the shippers of other commodities.

Your orators further show that the enforcement of said order of the defendant will deprive your orators of revenue from the transportation of lumber, shingles, and forest products to which
57 they would be entitled under the rates fixed by said tariffs so filed, published, and posted to an amount of more than six hundred thousand dollars per year, and each of your orators, by the enforcement of said order, will be deprived of revenue in a sum greatly in excess of two thousand dollars per year.

XVIII. Your orators, therefore, pray that a decree be entered herein setting aside and annulling the said orders of the defendant, Interstate Commerce Commission, in said causes Nos. 1329 and 1335 and perpetually enjoining the defendant and its members, their agents, servants, and representatives, from enforcing said orders,

and from taking steps or instituting any proceedings for the enforcement of said orders.

And your orators further pray that such other and further relief be granted in the premises as justice and equity may require.

Your orators further pray that your honors grant unto your orators a writ of subpœna, directed to said Interstate Commerce Commission, commanding it at a certain day and under a certain penalty therein to be specified, to be and appear before your honors in this honorable court and then and there full, true, and complete answer make to all and singular the premises, but not under oath (an answer under oath being hereby expressly waived), and to stand to and abide such order and decree herein as to your honors shall seem meet and agreeable to equity and good conscience.

And your orators will every pray.

Northern Pacific Railway Company, by J. M. Hannaford,
58 2nd vice president, (corporate seal); Great Northern Railway Company, by Robt. I. Farrington, 2nd vice president, (corporate seal); Chicago, Burlington & Quincy Railroad Company, by D. Miller, 1st vice president; Union Pacific Railroad Company, by J. C. Stubbs, its traffic director; Oregon Short Line Railroad Company, by J. C. Stubbs, its traffic director; Oregon Railroad & Navigation Company, by J. C. Stubbs, its traffic director; James B. Kerr, Hale Holden, of counsel for Northern Pacific Railway Company, Great Northern Railway Company, Chicago, Burlington & Quincy Railroad Company; W. W. Cotton, F. C. Dillard, of counsel for Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad & Navigation Company; James B. Kerr, Hale Holden, solicitors for complainants, Northern Pacific Railway Company, Great Northern Railway Company, Chicago, Burlington & Quincy Railroad Company; N. H. Loomis, W. W. Cotton, P. L. Williams, F. C. Dillard, solicitors for complainants, Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad & Navigation Company.

59 STATE OF MINNESOTA,
County of Ramsey, ss:

J. M. Hannaford, being first duly sworn, on oath states that he is the 2nd vice president of the Northern Pacific Railway Company in the above-entitled cause. Affiant further states that he has read the foregoing amended bill of complaint, and that the allegations therein

contained are true except where made upon information and belief, and where so made affiants states that he believes them to be true.

J. M. HANNAFORD.

Subscribed and sworn to before me this 20th day of October, A. D. 1908.

[SEAL.] W. T. FRANCIS,
Notary Public, Ramsey County, Minnesota.

My commission expires April 5, 1911.

STATE OF MINNESOTA,
County of Ramsey, ss:

R. I. Farrington, being first duly sworn, on oath states that he is the second vice president of the Great Northern Railway Company in the above-entitled cause. Affiant further states that he has read the foregoing amended bill of complaint, and that the allegations therein contained are true except where made upon information and belief, and where so made affiant states that he believes them to be true.

ROBT. I. FARRINGTON.

Subscribed and sworn to before me this 20th day of October, A. D. 1908.

[SEAL.] EARLE W. MCELROY,
Notary Public, Ramsey County, Minnesota.

My commission expires April 14, 1911.

60 STATE OF ILLINOIS,
County of Cook, ss:

D. Miller, being first duly sworn, on oath states that he is the 1st vice president of the Chicago, Burlington & Quincy Railroad Company in the above-entitled cause. Affiant further states that he has read the foregoing amended bill of complaint, and that the allegations contained therein are true except where made upon information and belief, and where so made affiant states that he believes them to be true.

D. MILLER.

Subscribed and sworn to before me this 19th day of October, A. D. 1908.

[SEAL.] J. H. PETTIBONE, *Notary Public.*

STATE OF ILLINOIS,
County of Cook, ss:

J. C. Stubbs, being first duly sworn, on oath states that he is the traffic director of the Union Pacific Railroad Company in the above-entitled cause. Affiant further states that he has read the foregoing amended bill of complaint, and that the allegations therein contained

are true except where made upon information and belief, and where so made affiant states that he believes them to be true.

J. C. STUBBS.

Subscribed and sworn to before me this 19th day of October, A. D. 1908.

[SEAL.] WILLIAM A. RAWSON, *Notary Public.*

61 STATE OF ILLINOIS,
County of Cook, ss:

J. C. Stubbs, being first duly sworn, on oath states that he is the traffic director of the Oregon Short Line Railroad Company in the above-entitled cause. Affiant further states that he has read the foregoing amended bill of complaint, and that the allegations therein contained are true, except where made upon information and belief, and where so made affiant states that he believes them to be true.

J. C. STUBBS.

Subscribed and sworn to before me this 19th day of October, A. D. 1908.

[SEAL.] WILLIAM A. RAWSON, *Notary Public.*

STATE OF ILLINOIS,
County of Cook, ss:

J. C. Stubbs, being first duly sworn, on oath states that he is the traffic director of the Oregon Railroad & Navigation Company in the above-entitled cause. Affiant further states that he has read the foregoing amended bill of complaint, and that the allegations therein contained are true, except where made upon information and belief, and where so made affiant states that he believes them to be true.

J. C. STUBBS.

Subscribed and sworn to before me this 19th day of October, A. D. 1908.

[SEAL.] WILLIAM A. RAWSON, *Notary Public.*

(Endorsed:) Filed October 20th, 1908. Henry D. Lang, clerk.

62 Thereafter and on October 31st, 1908, the following appearance was filed and entered in said cause, viz:

63 In the Circuit Court of the United States for the District of Minnesota, Third Division.

Northern Pacific Railway Company, Great Northern Railway Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad and Navigation Company, complainants, *vs.* The Interstate Commerce Commission, defendant.	In equity. No. 884.

To Henry D. Lang, Esq.,
Clerk of said Court.

Sir: Please enter my appearance as of counsel for the defendant, The Interstate Commerce Commission, in the above-entitled cause, Oct. 28, 1908.

Respectfully, W. A. Wimbish.

(Endorsed:) Præcipe for appearance of W. A. Wimbish for defendant. Entered C. R. "C," page 143. Filed October 31st, 1908. Henry D. Lang, clerk.

64 United States Circuit Court, District of Minnesota, Third Division.

Chancery rule and order book.

Northern Pacific Railway Co. et al. *vs.* Interstate Commerce Commission.	Equity. No. 884.

Oct. 31, 1910.

This day comes the defendant, Interstate Commerce Commission, by W. A. Wimbish, its solicitor, on whose motion it is hereby ordered that the appearance of said defendant be, and the same hereby is, entered that *that* the appearance of the said W. A. Wimbish as additional solicitor for the defendant be, and the same hereby is, entered.

(Entered) C. R. "C," page 143.

65 Thereafter and on the 16th day of December, 1908, the following demurrer and answer of the Interstate Commerce Commission was filed in said cause, to wit:

66 In the Circuit Court of the United States for the District of Minnesota, Third Division.

NORTHERN PACIFIC RAILWAY COMPANY, Great Northern Railway Company, Chicago, Burlington and Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad and Navigation Company, complainants, *v.* THE INTERSTATE COMMERCE COMMISSION, defendant.	In Equity. No. 884.

Demurrer and answer of Interstate Commerce Commission, abovenamed defendant, to the amended bill of complaint of the abovenamed complainants.

(1) Demurrer.

This defendant, the Interstate Commerce Commission, by protestation, not confessing or acknowledging all or any of the matters and things in the said amended bill contained to be true in such manner and form as the same are therein set forth and alleged,

67 as to so much of the said amended bill (paragraph XIII and paragraph XIV, excepting the clause on page 30 beginning "Your orators aver, etc.") as seeks to aver that the act to regulate commerce as amended June 29, 1906, is unconstitutional and void, does demur thereto, and for cause of demurrer shows that said complainants have not, as appears by said portions of their said amended bill, made out any title to any equitable relief.

Defendant specially demurs to said portion of complainants' amended bill and assigns as such grounds of demurrer:

I. That the power to prescribe maximum rates to be charged in the future on interstate traffic has constitutionally been delegated by Congress to this defendant.

II. That the Interstate Commerce Commission, in hearing and considering evidence and arriving at conclusions regarding the reasonableness of rates to be established, proceeds in accordance with due process of law, and does not therein or thereby exercise the judicial power invested by the Constitution in the courts of the United States.

III. That in entertaining complaints for reparation and in granting orders for the payment of money thereon, which orders
68 are prima facie evidence of damages owing to complainant before this defendant, the Interstate Commerce Commission does not exercise such a purely judicial function as is forbidden by the Constitution.

IV. That the provision of the statute which authorizes the Interstate Commerce Commission to entertain complaints for reparation and to grant orders for the payment of money thereon is entirely separable and distinct from the remaining provisions of the act to regulate commerce as amended and does not in anywise affect the constitutionality or validity of the remaining portions of the act.

V. That whether or not in entertaining complaints for reparation and in granting orders for the payment of money thereon the Interstate Commerce Commission does exercise such a purely judicial function as is forbidden by the Constitution can not be drawn in question in this case for that there is no allegation that this defendant has exercised such power.

VI. That the portion of the act to regulate commerce as amended which provides for penalites for willful disobedience to the orders of the commission is not offensive to the fifth amendment to the Constitution.

69 VII. That the portion of the act to regulate commerce which provides for penalties for willful disobedience to the orders of the commission is entirely separable from the remaining portions of the statute and does not in anywise affect the constitutionality or validity of the remaining portions of the statute.

VIII. That whether or not the penalties prescribed in the act to regulate commerce as amended for willful disobedience to the orders of the commission would render the statute in that regard offensive to the fifth amendment to the Constitution can not be drawn in question in this case for that it affirmatively appears that the complainants while seeking relief in this court are observing and obeying the said orders of the commission and are not exposed to prosecution for penalties or forfeitures.

IX. That in providing for penalties against common carriers violating the act to regulate commerce by disobeying the orders of the said commission, the statute does not offend the fifth amendment to the Constitution for that the statute expressly authorizes a suit in the Circuit Court of the United States to enjoin, suspend, or set aside the orders of the commission either before or after such
70 orders become effective; and said statute further confers jurisdiction and lays the venue for the judicial hearing according to established methods before any penalties or forfeitures can be declared, thereby preserving due process of law.

Wherefore, for divers other good causes for demurrer appearing in the said amended bill, defendant prays the judgment of this honorable court whether it shall be compelled to make any answer to such parts of the said amended bill as it has hereinbefore demurred to.

(2) Answer.

And the defendant, the Interstate Commerce Commission, not waiving the said several demurrers, but wholly relying and insisting thereon for answer to so much of the residue of the said amended bill as it is advised that it is material or necessary for it to make answer unto, answering, says:

I. Defendant admits the allegations of Paragraph I.

II. Defendant admits the allegations of Paragraph II.

III. Defendant admits the allegations of Paragraph III.

71 IV. Defendant admits the allegations of Paragraph IV.

V. Defendant admits the allegations of Paragraph V that the rates named in said tariffs so filed, published, and posted thereupon became and were the only lawful rates for the transportation of the various commodities comprised within said four groups from each and all the points in the State of Washington named in said tariffs to each and all the points of destination in said other States named in said tariffs; but defendant denies that the rates named in said tariffs were on November 1, 1907, ever since have been, and now are, neither unreasonable nor unjust; and defendant further denies that said rates will continue to be neither unreasonable nor unjust for a period of two years from October 15, 1908.

VI. Defendant admits the allegations of Paragraph VI.

VII. Defendant admits the allegations of Paragraph VII.

VIII. Defendant admits the allegations of Paragraph VIII.

72 IX. Defendant admits the allegations of paragraph IX.

X. Defendant admits the allegations of paragraph X.

XI. Defendant admits the allegations of paragraph XI.

XII. Defendant admits the allegations of paragraph XII, that the effect of the orders so entered by the defendant in said causes 1329 and 1335 if enforced will be to reduce the rates established by complainants for the transportation of lumber, shingles, and forest products from points within the State of Washington to many points in other States 5 cents per 100 pounds, and in some instances more than 5 cents per 100 pounds; but defendant avers that the net result of the enforcement of said orders in said cause will be to leave in full force and effect rates to most of the points embraced in said order which are materially higher than the rates which hitherto had been voluntarily charged by complainants for many years previous to November 1, 1907.

XIII. (Entire paragraph in amended bill of complaint covered by special demurer.)

73 XIV. (All of paragraph XIV in the amended bill of complaint is covered by special demurrer except the clause on page 30 beginning " Your orators aver, etc.")

Defendant denies the allegations of paragraph XIV, that the rates in effect prior to the effective date of the orders complained of for the transportation of lumber, shingles, and forest products between the points mentioned in said orders, and that each of the said rates

are, and will be for more than three years hence, low, just, and reasonable rates, within the meaning of the fifth amendment to the Constitution, which prohibits the taking of property without just compensation or without due process of law.

Defendant avers that this court can not and will not inquire into the matter as to whether said rates are just and reasonable within any other meaning; but if this court holds it has jurisdiction to make such inquiry, defendant denies that said rates are in any respect just and reasonable.

Defendant denies that the rates prescribed by it in and by its orders are, or that any of them is or will be for more than three years hence, unjust and unreasonable within the meaning of the fifth amendment to the Constitution, which prohibits the taking of property without just compensation or without due process of law. Defendant avers that this court can not and will not inquire into

74 the matter as to whether said rates are just and reasonable within any other meaning; but if this court holds it has jurisdiction to make such inquiry, defendant denies that said rates are in any respect unjust and unreasonable.

Defendant further denies that the rates fixed by this defendant are, or that any of them is or will be, to complainants, for the service rendered, inadequate compensation within the aforesaid constitutional guaranty or otherwise.

Defendant avers that complainants should not be heard to maintain this suit in equity, for that the said complainants have a complete and adequate remedy by proceedings before this defendant in that all the matters and things in the complainants' amended bill set forth are cognizable before this defendant; that upon application of the complainants or of any of them and upon proper showing, this defendant has power to suspend, modify, or amend in whole or in part the orders complained of and to consider any and all of the matters in the complainants' amended bill set forth and to take such action thereon, and to make such order thereon, as in its judgment would be proper to make; and that in advance of such application by the complainants to this defendant the complainants are not entitled as a matter of right to invoke the jurisdiction of this court in equity.

Defendant further avers that this court, sitting as a court of

75 equity, should not herein either hear or determine the rights of the complainants upon any state of facts which were within the knowledge of the complainants and which they failed and neglected to present before this defendant at the time of the hearings out of which the orders complained of grew, nor on account of any facts, matters, or things which may have arisen since said hearings, except such facts, matters, or things be first presented by application for rehearing or otherwise to this defendant. Neither does said amended bill of complaint set forth any reason why any of such matters and things could not be or were not presented to this defendant, nor that any facts, matters, or things have arisen since the said

hearings, nor that the complainants, or either of them, have in any manner been prevented from presenting to this defendant for its consideration any of the matters or things in the complainant's amended bill set forth.

Complainants have failed to make any application to the defendant for a rehearing of said matter, on account of any such facts, to have said orders suspended, set aside, or modified, although complainants well knew at all times since June 2, 1908, the date of the report of the defendant, that the orders complained of would be issued as a matter of course unless upon application of the complainants herein (defendants before the commission) such facts should be shown to this defendant as would entitle complainants to have said orders suspended, modified, or set aside.

76 Defendant further avers that this court ought not to consider the averments in complainants' amended bill of complaint that the transportation of traffic on rates prescribed by the defendant will not afford a fair compensation or will entail a loss, or that the same are unremunerative, or that the same are unjust and unreasonable for the service performed, because such allegations and declarations are statements of conclusions and opinions of interested parties and do not have coupled therewith any statement of any of the essential elements of facts upon which or from which the reasonableness of a rate can be determined.

Defendant further says that it is vested with the exclusive right and power of determining what are just and reasonable maximum rates to be charged on traffic subject to the act to regulate commerce as amended; that the reasonableness of such rates is not open to judicial inquiry upon original evidence leading to an independent conclusion; that in determining what are just and reasonable maximum rates to be charged in the future, this defendant must and does exercise discretion; that this court ought not and can not substitute its judgment and discretion for the judgment and discretion of this defendant; that this court will only determine whether the rates prescribed by this defendant are just and reasonable within the meaning of the constitutional guaranty which compels the establishment of rates with reasonable regard for the cost to the carrier

77 of the service rendered and for the value of the property employed therein, and also with reasonable regard for the value of the service to the public.

This defendant further says that the complainants do not aver in their amended bill that they or either of them are in possession of any information or facts upon which to base the said conclusion that the rates established by this defendant are unjust and unreasonable, other than the facts and evidence which were presented before the defendant in the hearing out of which the orders complained of grew, all of which facts and evidence were presented to this defendant and were by it duly considered.

Defendant shows that the ascertainment mathematically of what it costs to haul a given quantity of traffic of a certain description

between two points upon a certain line of railway is impossible; that over the same line of railway, hauled by the same engine, are carried in the same train traffic in varying quantities widely different in character and value; that over the same line of railway is hauled both freight and passenger traffic in different trains of varying size; that the fixed charges of maintenance and operation can not be apportioned with mathematical exactness to the one kind of traffic or to the other; that in the same train over the same line of railway are hauled both interstate intrastate traffic; that the cost of operation and of handling these two classes of traffic can not be mathe-
78 matically determined so as to apportion to each class of traffic its proper division of cost; that while a considerable proportion of cost and expense can be located to the particular service or the particular traffic in a given instance, yet that varies materially with conditions on particular lines of road with the volume, density, and direction of movement, and that no method of apportionment between different articles of freight can be devised except that which involves the exercise of discretion and judgment, results varying according to the method used.

Defendant therefore says that the statements and allegations of Paragraph XIV of the amended bill above referred to are mere allegations and opinions which involve consideration of all these complex and difficult problems, and should not be accepted for the purpose of setting aside the orders of this defendant.

XV. Defendant denies that complainants have at no time prescribed rates for the transportation of lumber, shingles, and forest products between the points named in said orders in excess of charges which were just and reasonable. Defendant denies that upon the hearing before it in said cause in which said orders were so entered no evidence was considered or offered which in any wise showed or tended to show that the rates complained of therein were exces-
79 sive, unjust, or unreasonable; denies that the defendant entered its orders without any justification therefor, and without any evidence or finding of fact that said rates so complained of were excessive, unjust, or unreasonable.

On the contrary, defendant avers that evidence was introduced before this defendant showing, and tending to show, that the rates complained of before this defendant and condemned by it in the orders in question, were unjust and unreasonable, and this defendant, after a full hearing afforded to all the parties to the complaint before it, was of the opinion that said rates so complained of were unjust and unreasonable and entered its orders accordingly. Defendant avers that in accordance with the statute in such cases made and provided it made a report in writing in respect to the matter under investigation, which report stated the conclusions of this defendant, together with its decision, order, and requirement in the premises. Said report or opinion is attached hereto as Exhibit A and is made part hereof as fully as if the same was set forth in full in this paragraph of the answer. Defendant says that the facts shown by

said investigation material to be considered by this defendant are stated fully, fairly, and completely in said report.

Defendant further says that every opportunity was afforded to complainants herein in the hearing before this defendant to introduce any and all testimony and evidence which in any wise was
80 pertinent to the matters involved in said hearings, and that at said hearings complainants herein declined to introduce further testimony and announced to this defendant that they had no further evidence to offer, and so rested their case on the evidence before this defendant.

Defendant further says that while the matters and things embraced in what are known as dockets Nos. 1329 and 1335 were pending before this defendant there were at the same time pending similar matters and things in what are known as dockets Nos. 1327, 1331, 1348, and 1054, and that by agreement of counsel in cases Nos. 1329 and 1335, to which complainants herein were parties defendant, any and all matters and things presented to this defendant in the hearings in said other cases might, and should, be considered by this defendant with the same force and effect as if the same had been formally presented and made part of the record in Nos. 1329 and 1335.

XVI. Defendant denies the allegations of Paragraph XVI.

Defendant avers that the conclusions sought to be drawn from said testimony tending to show the facts stated in said paragraph were strongly and earnestly controverted by complainants in the hearing before this defendant, and much testimony in oppo-
81 sition to the claims of the defendants in the hearing before this defendant was introduced; and that there was some conflict in the testimony and evidence before this defendant. Defendant further avers that each and every member of the Interstate Commerce Commission fully realized the great importance of the issues involved in the complaint before this defendant; that each and every member of this defendant gave personal attention to all the testimony offered upon either side during the several days occupied in the taking of testimony, and afterwards heard all parties at great length in oral argument; and that the members of this defendant carefully examined and considered the various matters of fact and argument contained in the voluminous briefs filed by each party to the hearing before this defendant. Defendant further avers that the orders complained of in this amended bill of complaint, and the report and opinion attached hereto and made a part hereof as Exhibit A, are the result of the most painstaking consideration and care on the part of each individual member of this defendant.

This defendant avers that by the statute it has been authorized and required to perform certain duties; that in the distribution of the powers of government this defendant is required to determine, in cases like that heard by it (out of which the orders complained of in this case grew), what shall be the just and reasonable trans-
82 portation charge to be charged by carriers subject to said act for the future; that authority to determine that issue could not

be, under the Constitution of the United States, conferred upon this court, and, even if it could be so conferred, such power and authority has not been so conferred by any existing law. Defendant further avers that it is both the right and the duty of this court to protect these complainants against arbitrary and unlawful exercise of authority conferred upon this defendant. Yet, this court ought not, and will not, review the judgment and findings of this defendant unless it be made clearly to appear that the orders complained of transcend the pale of legitimate regulation and constitute such a violation of the constitutional rights of the carrier as to shock the conscience of a chancellor.

Defendant further avers that the establishment of a rate of transportation for the future involves the exercise of discretion and judgment; that Congress has attempted to establish in this defendant an expert tribunal for determining questions of this character; and that this court will not undertake to say whether, upon all the facts existing in this case, it would have arrived at a different conclusion upon the facts presented as to what the rates should be for the future.

83 XVII. Defendant denies the allegations of paragraph XVII, that the rates in effect on November 1 and 2, 1907, are lower than the rates charged for like service by any carrier in the United States, and lower than rates heretofore fixed by this defendant for like services. Defendant denies that the rates fixed by the orders of this defendant are unremunerative and confiscatory in any sense. Defendant avers, on the contrary, that the rates established by the orders complained of are higher than the rates voluntarily established by the carriers for the same transportation covering a long period of years. Defendant avers that the complainants herein during the last ten years have received from their operations as common carriers munificent returns upon the property invested, and that said returns upon the property aforesaid are far above the average received by carriers in other parts of the United States.

Defendant avers that it is unable to determine from the amended bill of complaint what the complainants regard as constituting cost of conducting transportation. Defendant denies that the rates fixed by the orders of this defendant are not, and will not be, sufficient to pay the cost of conducting transportation and any just or fair return upon the value of the property used in said transportation, no matter whether complainants refer to the mere cost of hauling the

84 traffic or whether complainants refer to the proportion of fixed charges properly attributable to said transportation and the cost of operating such transportation.

Defendant further avers that in considering what is a just and reasonable rate for the future, many things are to be considered; that one of these is the question as to what extent the traffic covered by the orders of this defendant shall contribute to the total profit of the complainants herein.

Defendant admits that the enforcement of the orders complained of involves to each of the complainants an amount in excess of two thousand dollars per year.

Defendant therefore avers in conclusion that in the making of the orders complained of this defendant considered every material fact and circumstance which it should have considered and failed to consider no material fact or circumstance which it should have considered.

XVIII. Defendant avers that the allegations of complainants' amended bill of complaint are vague and uncertain; that they do not set forth facts with sufficient certainty to show the conclusions which are therein stated, to the effect that the rates prescribed by his defendant in its orders complained of will require transportation at less than the cost of service, or at a loss to the carrier, or that
85 the same will be unremunerative, or that the same are unjust and unreasonable, or that the same are confiscatory; and that because of the failure on the part of the complainants to specify the particular items of returns from said rates and the particular expense incident to the transportation mentioned in the defendant's order, the defendant is unable to know what complainants expect to show at final hearing or otherwise, and on this account is not able more specifically to answer the general allegations, averments, and conclusions of the amended bill of complaint, and the defendant says that it ought not to be required to answer such allegations.

The defendant, therefore, denies each and all of the allegations of complainants' amended bill of complaint not otherwise specifically denied herein, and which defendant is advised is material or necessary to be answered; and says that the conclusions, inferences, and arguments are erroneous and without foundation, and that the rates which this defendant prescribed are in all things just and reasonable and will afford to each of the carriers complainant a just compensation in all instances for the service performed.

The defendant denies that the complainants are in anywise entitled to the relief, or any part thereof, prayed for in said amended bill of complaint, or any relief whatsoever, and the defendant claims the same advantage of this, its answer thereto, as if it had demurred to said amended bill of complaint, and prays to be dismissed with
86 its reasonable charges in this behalf most wrongfully sustained.

INTERSTATE COMMERCE COMMISSION,
By ——— ———,
Secretary thereof, thereunto duly authorized.

I hereby certify that the foregoing demurrer is in my opinion well founded in point of law.

L. M. WALTER,
Solicitor for Defendant.

WASHINGTON,
District of Columbia, ss:

EDWARD A. MOSELEY, being first duly sworn, says on oath that he is the Secretary of the defendant; that he knows the contents of the

foregoing demurrer and answer; that the said demurrer is not interposed for delay; and that the matters and things stated in the answer are true to the best of his knowledge and belief.

———— ————,
CHARLES C. HOUPT,
United States Attorney,
LUTHER M. WALTER,
Solicitors for Defendant.

Subscribed and sworn to before me this the ——— day of December, 1908.

———— ————, *Notary Public.*

87 EXHIBIT A.

88 No. 1329.
Pacific Coast Lumber Manufacturers' Association et al.
v.
Northern Pacific Railway Company et al.

No. 1335.
Southwest Washington Lumber Manufacturers' Association
v.
Northern Pacific Railway Company et al.

(Submitted March 20, 1908. Decided June 2, 1908.)

1. Petitions filed in these cases questioned the reasonableness of defendants' freight rates as advanced, effective November 1 and 2, 1907, on carload shipments of lumber, shingles, and other forest products from the Pacific northwest to points of destination in the East, South, and Southeast: *Held*, That the rates now in effect from points on defendants' lines in Washington, Oregon, Idaho, Montana, and British Columbia to all points in the territory west of a line running through and including Pembina and Grand Forks, N. Dak., Moorhead and Breckenridge, Minn., Sioux City and Council Bluffs, Iowa, St. Joseph and Kansas City, Mo., Van Buren, Ark., and Galveston, Tex., are unreasonable and unjust to the extent that they exceed those that were in effect over the lines of the defendant carriers, respectively, on October 31, 1907; that the rates now in effect from said points of origin to points in the territory east of the territory above described are unreasonable and unjust to the extent that they exceed 5 cents per 100 pounds above the rates in effect October 31, 1907.

2. The rates in effect prior to the advances complained of had been in force for long periods of time, and the lumber trade had adjusted itself to the conditions obtaining under those rates. The defendants derive a large proportion of their revenues from the lumber traffic, and it clearly appears that they have not only earned large profits on their general business, but that the transportation of lumber under the old rates yielded a commensurate part thereof and a reasonable return for the service performed.

3. Where an advance is made in rates which have long been maintained and the evidence shows that the traffic affected is large, important, and constantly increasing the advance will be held unjust unless it is satisfactorily explained.

W. A. Wimbish, Austin E. Griffiths, George Dysart, and W. H. Abel for complainants.

James B. Kerr for Northern Pacific Railway Company and Great Northern Railway Company.

Hale Holden and James B. Kerr for Chicago, Burlington & Quincy Railroad Company.

89 W. W. Cotton, James B. Kerr, and F. C. Dillard for Oregon Short Line Railroad Company, Oregon Railroad & Navigation Company, and Union Pacific Railroad Company.

J. A. Twohey for Canadian Pacific Railway Company.

Herrick & Christiansen for Chicago Great Western Railway Company.

James B. Kerr for Bellingham Bay & British Columbia Railroad Company, Columbia & Puget Sound Railroad Company, and Port Townsend Southern Railroad Company.

Report of the commission.

Clements, Commissioner:

These cases involve the reasonableness of defendants' freight rates, as advanced, effective November 1 and 2, 1907, on carload shipments of timber and cedar, fir, hemlock, larch, pine, and spruce lumber and on shingles and other forest products from the Pacific northwest, including all points of origin on the several lines of defendant carriers in each of the States of Washington, Oregon, Idaho, and Montana and in British Columbia, to points of destination within States and Territories east, south, and southeast thereof. The cases were heard together and will be disposed of in one report.

In case No. 1329 complainants state that their petition is filed in behalf of themselves and all others similarly situated with respect to this controversy, and in both of the cases reparation is asked for damages resulting from the exaction of the alleged unreasonable rates.

These rates, which are now in effect, except in so far as they have been slightly modified in special instances by subsequent amendments and supplements, are published in Trans-Continental Freight Bureau, East Bound, Special Tariff, No. S. R. 963, I. C. C. No. 850, with Supplements 1 and 2, effective November 1, 1907, superseding Trans-Continental Freight Bureau, East Bound, Special Tariff, No. S. R. 662, I. C. C. No. 564; Local and Joint Tariff on Lumber, Shingles, etc., Great Northern I. C. C. No. A–2667, effective November 1, 1907; Local and Joint Tariff on Lumber, Shingles, etc., Nor. Pac. Ry. I. C. C. No. A–3432, effective November 2, 1907, superseding Nor. Pac. Ry. I. C. C. Nos. B–479 and A–3415.

Supplement No. 10 to Trans-Continental Freight Bureau, East Bound, Tariff No. "2–D," I. C. C. No. 812, effective November 1, referred to in the petition as carrying certain of the rates here in-

volved, was received for filing in the office of the commission on September 27, 1907, but was returned for the reason that it was not in the form required by the commission's rules. Subsequently Supplement No. 11 to said tariff was filed November 12, 1907, as superseding Supplement No. 9 and canceling Supplement No. 10. Supplements 12, 13, 14, 15, and 16 have been subsequently issued naming through rates to New York, Boston, and common points.

90 The rates involved are commodity rates embraced in the several rate schedules above mentioned. These schedules contain rates from points in each of the States of Washington, Oregon, Idaho, and Montana, and in British Columbia to points in other States and Territories. The advance in these rates accrues for the most part to the carriers performing the haul to such Mississippi River crossings and Chicago and points having similar adjustment. By the rate schedules above referred to the defendant carriers increased their rates for the transportation of shingles and certain kinds of timber, lumber, and other forest products from points of origin in the States of Washington, Oregon, Idaho, and Montana, and points in British Columbia to many points reached by them in other States to the east, south, and southeast, as definitely shown by reference to the rate schedules above stated and those in effect over the lines of defendant carriers on October 31, 1907, immediately prior to the effective date of the schedules above named.

Forest products, while including timber, lumber, and shingles, also include many comparatively minor articles, the rates on which are involved herein, and all are subdivided or classified by these defendants into groups of articles or commodities designated in the rate schedules mentioned as groups A, B, C, D, and E.

These schedules containing the advanced rates consist of some 380 pages in the tariff schedule proper and 214 pages in all of the supplements thereto. On account of their great volume it is impracticable to set forth in detail the amounts of sundry rates and the increases therein. For definiteness and certainty in respect thereto we have referred to the tariff schedules themselves for the specific rates involved and will deem this sufficient for the purpose of future reference hereinafter.

These rates vary in amount not from every point of origin to each point of destination according to distance, but the defendant carriers have established groups of points of origin on their respective lines in Washington, Oregon, Idaho, Montana, and British Columbia, from all of which points in a given group the rates are the same to any given destination on interstate shipments. There are three of these groups, designated as "Coast Rates Group," "Spokane Rates Group," and "Montana-Oregon Rates Group."

The Trans-Continental Freight Bureau is an agency of the principal transcontinental carriers, including several of the defendant carriers chiefly participating in the traffic involved in these cases, and others, for the publication of their rate schedules, joint and otherwise. Through this agency many of the rates complained of were concurrently filed with the commission, published, and made effective

on the same date, evidently pursuant to a previous understanding between the carriers parties thereto. In so far as the rates were separately filed by any of the carriers they became effective almost simultaneously with those filed by said bureau.

91 The groups of points of origin above referred to on the lines of each of the originating carriers defendants herein taking "Coast rates," "Spokane rates," and "Montana-Oregon rates," are as follows:

Coast rates.

Points on the Northern Pacific Railway in Washington and Oregon on the main line and branches from Portland, Oreg., and north to and including Sumas and Bellingham, Wash. Also points in Washington on the main line east of Tacoma to Easton, Wash. (85 miles), inclusive.

Points on the Great Northern Railway on main line and branches from Seattle, Wash., to Vancouver, British Columbia, inclusive. Also points in Washington on main line east of Seattle to Leavenworth, Wash. (142 miles), inclusive.

Points on the Oregon Railroad & Navigation Company in Oregon, Portland to Cascade Locks (45 miles), inclusive.

Points on the Southern Pacific Company, Portland and south to Ashland, Oreg., inclusive, except Donna, Marcola, Hyland, and Wendling, Oreg., which are located on a branch line and take a differential of 1¼ cents per 100 pounds higher than "coast rates."

Points on the Bellingham Bay & British Columbia Railroad, Bellingham, Wash., to Sumas, Wash., inclusive; also points east of Sumas to Glacier, Wash., inclusive.

Points on the Columbia & Puget Sound Railroad, Seattle to Franklin, Wash. (34 miles), inclusive.

Points on the Port Townsend Southern Railroad, Olympia, Wash., to Tenino, Wash., inclusive.

Points on the Tacoma Eastern Railroad, Tacoma, Wash., to Glenavon, Wash., inclusive.

Points in Oregon on the Corvallis & Eastern Railroad as follows: Kingston, Mill City, Philomath, and Shelburn.

Points on the Astoria & Columbia River Railroad, west of Portland, except Seaside, Oreg., which takes a differential of 2 cents per 100 pounds higher than "coast rates."

Points on the Washington & Great Northern Railway, namely, Chopaka, Circle, Molson, Hull, Nighthawk, Oroville, and Porters, Wash.

Points in Idaho on the Kootenai Valley Railway as follows: Copeland, Port Hill, Rickerds Spur, Ritzville, Shultes Spur, and Spur Track when routed via Great Northern Railway and connections, extending northward from Rexford, Mont., to Fernie, British Columbia, including the latter point.

Spokane rates.

Points on the Northern Pacific Railway in Washington west of Spokane and east of Easton, Wash. (except from Cleelum, Thorp, Ellensburg, and North Yakima, Wash., from which points the rates are 2½ cents per 100 pounds higher than "Spokane rates"). Also points on the main line and branches in Washington, Idaho, and Montana, from Spokane, Wash., to Evaro, Mont. (240 miles), inclusive.

92 Points on the Great Northern Railway, Spokane, Wash., and east thereof to Troy, Idaho (141 miles), inclusive. Also points north of main line on Kootenai Valley Railway (Great Northern Railway) from Ritzville, Wash., to Creston, British Columbia, via Great Northern Railway only. Also points located on the branch line.

Points on the Oregon Railroad & Navigation Company, Spokane, and points south thereof, to Garfield, Wash., also Moscow, Idaho, and points west of Tekoa, Wash., to Walla Walla, Wash., inclusive, and points east of Tekoa, Wash., to Burke and Mullen, Idaho, inclusive.

Points on the Spokane International Railway east of Spokane to Eastport, Idaho, including the latter point.

Points on the Coeur D'Alene & Spokane Railway in Washington and Idaho east of Spokane to and including Hayden Lake, Idaho.

Points on the Spokane & Inland Railway in Washington, located on Inland Division.

Montana-Oregon rates.

Points on the Northern Pacific Railway on main line east of Evaro, Mont., to Drummond, Mont., inclusive, and on branch line Missoula to Darby, Mont., inclusive.

Points on the Great Northern Railway located on main line east of Lupfer, Mont., Whitefish to Midvale, Mont., inclusive; also points on branch line Marion to Columbia Falls, Mont., inclusive. (Points on main line Libbey, Mont., to Lupfer, Mont., inclusive, take a differential of 1 cent per 100 pounds above "Montana-Oregon rates.")

Points on the Oregon Railroad & Navigation Company between Pendleton and Huntington, Oreg., as follows: Meacham to North Powder, Oreg., inclusive, also Baker City, Pleasant Valley, Elgin, and Imbler, Oreg.

Points on the Oregon Short Line Railroad in Idaho, as follows: Boise, Nampa, Payette, and Weiser.

Trans-Continental Freight Bureau, East-Bound, Tariff I. C. C. No. 850, above referred to, does not give an outline or territorial description of the points taking "coast rates," "Spokane rates," and "Montana-Oregon rates," but states specifically the points from which the rates apply, arranged in alphabetical order. It is found that there are some points which are included within the limits of the above descriptions which are not named in the tariff, and from which there appear to be no specific rates. This is especially true of

points on the Oregon Railroad & Navigation Company. In other cases points are named in the tariff which do not take "coast rates," "Spokane rates," or "Montana-Oregon rates," but are made
93 certain differentials higher than the rates so designated. These differential points, except as herein shown, are, in most cases, located on small roads or branch lines.

In view of the impracticability, for the reasons stated, of naming each and every rate affected, we have prepared from the schedules the following statements as fairly illustrative of the nature and extent of the increases under consideration:

Statement showing rates on lumber, carloads, from coast rate points, Spokane rate points, Montana-Oregon rate points to the following points, in force November 1, 1907; also the rates in force prior to November 1, 1907, via Northern Pacific Railway and Great Northern Railway.

[Rates in cents per 100 pounds.]

To—	From coast rate points.				From Spokane rate points.				From Montana-Oregon rate points.			
		Lumber.				Lumber.				Lumber.		
	Shingles.	Cedar.	Fir.	Spruce.	Shingles.	Cedar.	Fir.	Spruce.	Shingles.	Cedar.	Fir.	Spruce.
Pocatello, Idaho:												
November 1, 1907	55	55	40	40	47½	42½	37½	37½	37½	32½	27½	27½
Prior to November 1	45	45	40	40	37½	37½	37½	37½	27½	27½	27½	27½
Salt Lake, Utah:												
November 1, 1907	60	55	45	45	50	45	40	40	40	35	30	30
Prior to November 1	50	50	45	45	40	40	40	40	30	30	30	30
Billings, Mont.:												
November 1, 1907	52½	52½	40	40	39	38	34½	34½	(a)	(a)	(a)	(a)
Prior to November 1	47½	47½	35	35	34½	34½	34½	34½	(a)	(a)	(a)	(a)
Cheyenne, Wyo.:												
November 1, 1907	60	60	50	50	55	50	45	45	50	45	40	40
Prior to November 1	60	50	40	40	50	40	40	40	50	35	35	35
Denver, Colo.:												
November 1, 1907	60	60	50	50	55	50	45	45	50	45	40	40
Prior to November 1	60	50	40	40	50	40	40	40	50	35	35	35
Wahpeton, N. Dak.:												
November 1, 1907	60	60	50	50	55	50	45	45	53	48	43	43
Prior to November 1	50	50	40	40	50	45	40	40	(a)	(a)	(a)	(a)
Aberdeen, S. Dak.:												
November 1, 1907	60	60	50	50	55	50	45	45	53	48	43	43
Prior to November 1	50	50	40	40	50	45	40	40	(b)	(b)	(b)	(b)
Salina, Kans.:												
November 1, 1907	65	65	55	55	60	55	50	50	53	48	43	43
Prior to November 1	60	60	50	50	60	50	50	50	60	45	40	40
Kearney, Nebr.:												
November 1, 1907	65	65	55	55	60	55	50	50	53	48	43	43
Prior to November 1	60	60	50	50	60	50	45	45	60	45	40	40
Omaha, Nebr.:												
November 1, 1907	65	65	55	55	60	55	50	50	53	48	43	43
Prior to November 1	60	60	50	50	60	50	45	45	60	45	40	40
Kansas City, Mo.:												
November 1, 1907	65	65	55	55	60	55	50	50	53	48	43	43
Prior to November 1	60	60	50	50	60	50	50	50	60	45	40	40
Minneapolis, Minn.:												
November 1, 1907	60	60	50	50	55	50	45	45	53	48	43	43
Prior to November 1	50	50	40	40	50	45	40	40	50	45	40	40
Madison, Wis.:												
November 1, 1907	71	70	60	60	66	60	55	55	64	58	53	53
Prior to November 1	61	60	50	50	61	55	50	50	61	55	50	50
Des Moines, Iowa:												
November 1, 1907	72	70	60	60	67	60	55	55	64½	58	53	53
Prior to November 1	62	60	50	50	62	55	50	50	62	55	50	50
Chicago, Ill.:												
November 1, 1907	70	70	60	60	65	60	55	55	63	58	53	53
Prior to November 1	60	60	50	50	60	55	50	50	60	55	50	50
St. Louis, Mo.:												
November 1, 1907	70	70	60	60	65	60	55	55	62½	57½	52½	52½
Prior to November 1	62½	62½	52½	52½	62½	57½	52½	52½	62½	54½	49½	49½

a No published rates.

b No rate via Great Northern Railway.

Trans-Continental I. C. C. No. 564–850.
Northern Pacific I. C. C. No. B–479, 3415, and 3432.

94 *Statement showing rates, in cents, per ton per mile on lumber, carloads, from Seattle and Spokane, Wash., and Missoula, Mont.*

To—	From Seattle, Wash.				From Spokane, Wash.				From Missoula, Mont.			
		Rate per ton-mile.				Rate per ton-mile.				Rate per ton-mile.		
	Distance.	Shingles.	Cedar lumber.	Fir and spruce lumber.	Distance.	Shingles.	Cedar lumber.	Fir and spruce lumber.	Distance.	Shingles.	Cedar lumber.	Fir and spruce lumber.
	Miles.	*Cts.*	*Cts.*	*Cts.*	*Miles.*	*Cts.*	*Cts.*	*Cts.*	*Miles.*	*Cts.*	*Cts.*	*Cts.*
Pocatello, Idaho	916				751				374			
November 1, 1907		1.201	1.201	0.873		1.264	1.131	0.998		2.006	1.738	1.471
Prior to November 1		.983	.983	.873		.998	.998	.998		1.471	1.471	1.471
Salt Lake City, Utah	1,087				922				545			
November 1, 1907		1.104	1.012	.828		1.085	.976	.808		1.468	1.284	1.101
Prior to November 1		.920	.920	.828		.868	.868	.868		1.101	1.101	1.101
Billings, Mont	1,021				621				363			
November 1, 1907		1.028	1.028	.784		1.255	1.223	1.111				
Prior to November 1		.930	.930	.686		1.111	1.110	1.110				
Cheyenne, Wyo	1,468				1,303				926			
November 1, 1907		.817	.817	.681		.844	.768	.691		1.080	.972	.864
Prior to November 1		.817	.681	.545		.768	.614	.614		1.080	.756	.756
Denver, Colo	1,574				1,409				1,032			
November 1, 1907		.763	.763	.635		.781	.710	.639		.969	.872	.775
Prior to November 1		.763	.635	.508		.710	.568	.568		.969	.678	.678
Wahpeton, N. Dak	1,633				1,309				1,055			
November 1, 1907		.734	.734	.612		.840	.764	.688		1.005	.910	.815
Prior to November 1		.612	.612	.490		.764	.688	.611				
Aberdeen, S. Dak	1,780				1,441				1,248			
November 1, 1907		.674	.674	.562		.763	.694	.625		.849	.769	.689
Prior to November 1		.562	.562	.449		.694	.625	.555				
Salina, Kans	2,027				1,862				1,400			
November 1, 1907		.641	.641	.543		.644	.591	.537		.757	.686	.614
Prior to November 1		.592	.592	.493		.644	.537	.537		.857	.643	.571
Kearney, Nebr	1,717				1,623				1,246			
November 1, 1907		.757	.757	.641		.739	.677	.616		.851	.770	.680
Prior to November 1		.698	.698	.582		.739	.616	.544		.963	.722	.642
Omaha, Nebr	1,913				1,513				1,255			
November 1, 1907		.859	.859	.727		.793	.727	.661		.845	.765	.685
Prior to November 1		.793	.793	.661		.793	.661	.595		.956	.717	.637
Kansas City, Mo	2,055				1,655				1,397			
November 1, 1907		.633	.633	.535		.725	.664	.604		.759	.687	.616
Prior to November 1		.584	.584	.486		.725	.604	.604		.859	.644	.573
Minneapolis, Minn	1,818				1,479				1,244			
November 1, 1907		.660	.660	.550		.743	.676	.608		.852	.722	.691
Prior to November 1		.550	.550	.440		.676	.608	.541		.804	.724	.643
Madison, Wis	2,100				1,761				1,526			
November 1, 1907		.677	.067	.571		.749	.682	.625		.839	.760	.694
Prior to November 1		.580	.571	.476		.692	.625	.568		.799	.721	.655
Des Moines, Iowa	2,059				1,659				1,401			
November 1, 1907		.747	.680	.583		.807	.723	.662		.921	.828	.757
Prior to November 1		.602	.583	.485		.747	.662	.662		.885	.785	.714
Chicago, Ill	2,239				1,900				1,665			
November 1, 1907		.695	.695	.579		.684	.632	.579		.757	.697	.637
Prior to November 1		.536	.536	.446		.632	.579	.526		.721	.661	.601
St. Louis, Mo	2,332				1,992				1,674			
November 1, 1907		.657	.657	.563		.673	.621	.569		.746	.686	.627
Prior to November 1		.586	.586	.492		.647	.595	.544		.746	.651	.591

As affording a basis of comparison with the foregoing we include below a statement showing rates on lumber, carloads, from certain important yellow pine shipping points in the South to some of the principal consuming markets of the Middle West, which constitute a common field for the sale of southern yellow pine lumber and lumber produced in the Pacific Northwest. This table also shows the distances and rates per ton per mile between the points mentioned.

95 *Statement showing distances, and rates per 100 pounds and per ton per mile.*

From—	To East St. Louis.			To Chicago.			To Kansas City.			To St. Paul.		
	Distance.	Rate.	Rate per ton-mile.	Distance.	Rate.	Rate per ton-mile.	Distance.	Rate.	Rate per ton-mile.	Distance.	Rate.	Rate per ton-mile.
	Miles.	*Cts.*	*Cts.*	*Miles.*	*Cts.*	*Cts.*	*Miles*	*Cts.*	*Cts.*	*Miles.*	*Cts.*	*Cts.*
New Orleans, La	696	18	0.517	912	24	0.526	880	23	0.523	1,275	30	0.471
McComb, Miss	600	18	.600	817	24	.588	880	23	.523	1,179	30	.509
Jesup, Ga	847	20	.472	969	26	.537	1,124	30	.534	1,379	33	.479
Shreveport, La	593	19½	.658	700	26	.743	560	23	.821	1,123	32	.570
Tyler, Tex	689	19½	.566	913	26	.570	969	23	.475	1,268	32	.505

Short line distances only are stated in these tables. In some instances the lumber as actually handled moves over somewhat longer routes, but it is impracticable to arrive at the exact distances which the traffic is in fact hauled. However, the mileages above given are approximately correct and may be fairly used.

Prior to the effective date of the first commodity tariff carrying rates on lumber, filed by the Trans-Continental Freight Bureau on behalf of the lines represented by it, April 15, 1905, the rates were published from time to time in the individual issues of the several roads, under which a somewhat different classification had been adopted on the various kinds of lumber and forest products from that which has been in force since April 15, 1905, as will be seen by comparison of the statement following with those preceding. This statement is inserted as being fairly illustrative of the course of these rates in the past, having been taken from the individual tariffs of the Great Northern and Northern Pacific, the two most important lumber carrying roads from this territory, showing rates from Seattle and Spokane, and points taking the same rates, to a number of representative destinations.

Statement showing rates on lumber and shingles, carload, from Seattle and Spokane, Wash., and points taking same rates to points named below, on the dates specified.

[Rates in cents per 100 pounds.]

To—	From Seattle.			From Spokane.		
	Shingles.	Lumber, except fir.	Fir.	Shingles.	Lumber, except fir.	Fir.
	Cents.	*Cents.*	*Cents.*	*Cents.*	*Cents.*	*Cents.*
Salt Lake City, Utah:						
February, 1901	50	50	50	50	50	50
August 3, 1901	50	50	45	50	50	45
Cheyenne, Wyo.:						
September 9, 1898	60	60	60	60	60	60
April 25, 1900	60	60	60	60	60	60
February 19, 1901	60	60	60	60	60	60
August 3, 1901	60	50	40	60	50	40
Denver, Colo.:						
September 9, 1898	60	60	60	60	50	60
April 25, 1900	60	60	60	60	50	60
February 19, 1901	60	60	60	60	50	60
August 3, 1901	60	50	40	60	50	40

Statement showing rates on lumber and shingles, carload, from Seattle and Spokane, Wash., and points taking same rates to points named below, on the dates specified—Continued.

To—	From Seattle.			From Spokane.		
	Shingles.	Lumber, except fir.	Fir.	Shingles.	Lumber, except fir.	Fir.
	Cents.	*Cents.*	*Cents.*	*Cents.*	*Cents.*	*Cents.*
96 Aberdeen, S. Dak.:						
February 20, 1893	55	55	50	(a)	(a)	(a)
April 10, 1899	50	50	40	50	50	40
April 15, 1900	50	50	40	50	50	40
July 9, 1902	50	50	40	50	50	40
Salina, Kans.:						
September 9, 1898	62½	62½	62½	62½	62½	62½
January 30, 1899	62½	62½	52½	62½	62½	52½
April 25, 1900	62½	62½	62½	62½	62½	62½
February 19, 1901	62½	62½	62½	62½	62½	62½
Kearney, Nebr.:						
September 9, 1898	60	60	60	60	60	60
January 3, 1899	60	60	50	60	60	50
April 25, 1900	60	60	60	60	60	60
February 19, 1901	60	60	60	60	60	60
Omaha, Nebr.:						
July 27, 1887	60	60	60	(a)	(a)	(a)
March 1, 1888	60	60	60	(a)	(a)	(a)
August 1, 1888	60	60	60	(a)	(a)	(a)
January 1, 1889	60	60	60	(a)	(a)	(a)
February 16, 1890	55	55	55	(a)	(a)	(a)
June 3, 1891	55	55	55	(a)	(a)	(a)
February 20, 1893	55	55	55	(a)	(a)	(a)
February 5, 1895	60	60	60	60	60	60
September 9, 1898	60	60	60	60	60	60
January 30, 1899	60	60	50	60	60	50
April 25, 1900	60	60	60	60	60	60
February 19, 1901	60	60	60	60	60	60
November 4, 1901	60	60	50	60	50	45
Kansas City, Mo.:						
July 27, 1887	60	60	60	(a)	(a)	(a)
March 1, 1888	65	65	65	(a)	(a)	(a)
August 1, 1888	60	60	60	(a)	(a)	(a)
January 1, 1889	60	60	60	(a)	(a)	(a)
February 16, 1890	55	55	55	(a)	(a)	(a)
June 10, 1893	55	55	55	(a)	(a)	(a)
December 13, 1893	60	60	50	(a)	(a)	(a)
March 10, 1894	60	60	50	(a)	(a)	(a)
September 9, 1898	62½	62½	62½	62½	62½	62½
January 30, 1899	60	60	50	60	60	50
April 25, 1900	62½	62½	62½	62½	62½	62½
February 19, 1901	62½	62½	62½	62½	62½	62½
Minneapolis, Minn.:						
July 27, 1887	60	60	60	(a)	(a)	(a)
March 1, 1888	60	60	60	(a)	(a)	(a)
August 1, 1888	60	60	60	(a)	(a)	(a)
January 1, 1889	55	55	55	(a)	(a)	(a)
February 16, 1890	55	55	55	(a)	(a)	(a)
March 10, 1894	50	50	40	(a)	(a)	(a)
January 24, 1899	50	50	40	50	50	40
March 14, 1899	50	50	40	50	50	40
April 19, 1900	50	50	40	50	50	40
November 30, 1900	50	50	40	50	50	40
April 3, 1901	50	50	40	50	50	40
June 15, 1903	50	50	40	50	50	40
Madison, Wis.:						
April 11, 1899	60	60	50	60	60	50
Des Moines, Iowa:						
December 16, 1891	57½	57½	57½	(a)	(a)	(a)
December 3, 1892	57½	57½	57½	(a)	(a)	(a)
March 10, 1894	60	60	50	(a)	(a)	(a)
January 30, 1899	60	60	50	60	60	50
St. Louis, Mo.:						
June 30, 1888	60	60	60	(a)	(a)	(a)
January 1, 1889	57½	57½	57½	(a)	(a)	(a)
February 16, 1890	57½	57½	57½	(a)	(a)	(a)
June 3, 1891	60	60	60	(a)	(a)	(a)
September 6, 1891	57½	57½	57½	(a)	(a)	(a)
March 5, 1892	57½	57½	57½	(a)	(a)	(a)
April 25, 1893	57½	57½	50	(a)	(a)	(a)
September 2, 1896	62½	62½	52½	(a)	(a)	(a)
January 30, 1899	62½	62½	52½	62½	62½	52

a No specific rates from Spokane. Tariff contains intermediate clause which signifies that the Seattle rates will apply from Spokane as maxima.

Statement showing rates on lumber and shingles, carload, from Seattle and Spokane, Wash., and points taking same rates to points named below, on the dates specified—Continued.

	To—	From Seattle.			From Spokane.		
		Shingles.	Lumber, except fir.	Fir.	Shingles.	Lumber, except fir.	Fir.
97	Chicago, Ill.:	*Cents.*	*Cents.*	*Cents.*	*Cents.*	*Cents.*	*Cents.*
	July 27, 1887	60	60	60	(a)	(a)	(a)
	April 1, 1888	60	60	60	(a)	(a)	(a)
	August 1, 1888	60	60	60	(a)	(a)	(a)
	January 1, 1889	60	60	60	(a)	(a)	(a)
	February 16, 1890	60	60	60	(a)	(a)	(a)
	June 3, 1891	60	60	60	(a)	(a)	(a)
	March 5, 1892	60	60	60	(a)	(a)	(a)
	December 3, 1892	60	60	60	(a)	(a)	(a)
	February 20, 1893	60	60	60	(a)	(a)	(a)
	March 10, 1894	60	60	50	(a)	(a)	(a)
	October 16, 1898	60	60	50	(a)	(a)	(a)
	April 11, 1899	60	60	50	60	60	50
					60	60	50

a No specific rates from Spokane. Tariff contains intermediate clause which signifies that the Seattle rates will apply from Spokane as maxima.

As will be noted from the foregoing table, the rates on lumber have fluctuated to some extent during the period shown, but these fluctuations do not appear to have been coincident with or dependent upon any fluctuations in the volume of the traffic, but would seem to be due to the exigences of the carriers in competing for and making rates to secure the business. On the contrary, it appears that, notwithstanding the vast increase in the volume of this traffic since it began to move, as will be shown in a subsequent statement, the rates in many instances were higher just before these last advances than they had been prior thereto for considerable periods of time when the volume of the traffic was much less than at the time of the increases complained of, and in some noticeable instances they are now materially higher than they were twenty years ago.

An examination of the tariffs shows that there has been a steady increase in the carload minimums prescribed for this traffic. Up to 1894 the minimum was usually 20,000 pounds, since which time there has been a gradual increase in the minimums and in the capacity of the cars. In 1906 the minimum weight was changed to be governed by cubical capacity of the car and ranged from 23,000 to 67,000 pounds. It is claimed by complainants that the increase in the minimum loading requirements has amounted to an advance of from $70 to $100 per car in the charges. It is conceded that the average loading in 1906 and 1907 was approximately 58,000 pounds per car. It is not open to question, therefore, that the earnings per car under the present minimum rules are considerably more than in former years, but it must also be borne in mind that the larger and more modern equipment is heavier and costs more to construct.

The principal lines over which this traffic moves have been more expensive to construct and operate than the lines leading from the South to Chicago and other competitive points in that region.

98 In the year 1890 there was a decided predominance in the empty car movement east bound, this amounting at that time to about 161.17 per cent over the west bound empty car movement on the Northern Pacific Railway. In 1891 the predominance of the east bound empty car movement over west bound had decreased to 72.17 per cent, and in 1892 it had further decreased to 4.35 per cent. The statement submitted by the Northern Pacific Railway shows that in 1895 and during all subsequent years down to 1907 conditions have been reversed and during this entire period there has been a large predominance of the west bound empty car movement over east bound. This result is not wholly due to the increase in the lumber traffic, but in part to the very great increase in the volume of other important commodities shipped from the West to the consuming markets of the East. The establishment of manufactories of finished products in the West has also doubtless diminished the volume of manufactured products moving from the East to the West, and this change in the conditions is also demonstrated in the statement filed by the Northern Pacific Railway showing that in 1890 the predomination of west bound loaded car mileage over east bound amounted to 57.23 per cent, while in 1906 the predomination of east bound loaded car mileage over west bound amounted to 43.40 per cent and in 1907 to 3.20 per cent.

For the year ending June 30, 1907, the percentage of tonnage consisting of the products of mines out of the total number of tons carried on the Great Northern Railway was 51.75 and of forest products 14.80. On the Northern Pacific the percentage of mine products out of the total tonnage was 21.05 and of forest products 37.38. It appears that the empty car movement westward predominates to a greater extent on the Great Northern road and other lines on which the products of the mines constitute a greater proportion of the traffic handled than forest products than on the Northern Pacific, which hauls a much larger percentage of forest products than most of the other carriers.

Timber and lumber in carloads is everywhere regarded and treated as a low-grade commodity of freight, bearing relatively low transportation rates as compared with other kinds of traffic generally. This is true, among other reasons, because of its comparatively low value in proportion to its weight and bulk, which makes it susceptible of heavy loading, approximating or equaling the capacity of cars. It ordinarily moves in large and steady volume, is not susceptible to injury by weather or much risk by fire or other causes, is loaded and unloaded by the consignors and consignees, and does not require expeditious movement. The products here involved are sold in the principal markets to which they are consigned in competition
99 with like products from the Southern States produced from yellow pine, cypress, and other woods.

Aside from cedar, there is but little difference in the selling prices of these products from the Northwest and from the South. Formerly

these products both from the Northwest and from the South met the competition of white pine and other products of Michigan, Wisconsin, and other territory in that region, and they still meet this to some extent, but these last-named sources of supply are so far exhausted that white pine is not now formidable as a competitor. As these white-pine forests have been exhausted and as the demand for these products has increased with the development of the country and the settlement of the prairie States, the value of the forest products of the Pacific Northwest has greatly advanced in recent years. In consequence of these conditions the value of "stumpage" both in the Northwest and in the South has also greatly increased during the same period.

There are varying statements in the record respecting the number of lumber-producing plants, the amount of the investments therein, and the number of men employed. It is perhaps impossible to make an accurate statement concerning these matters from the conflicting data contained in the record, but it does clearly appear that there are many hundreds of mills in which are invested millions of dollars and that many thousands of men are employed in the operation of the plants and connected therewith. The annual output and the value thereof has been very great, and up to the year 1907, and for a number of years, as will be shown in succeeding statements, the output has been rapidly and constantly increasing, so that in recent years this business has been the most important industry in that region.

During the summer of 1907 it appears to have become understood among those interested in the lumber trade that the then existing rates were to be increased. The industry appears to have immediately begun, in some degree at least, to feel the effects of this unsettled rate situation. This was shown by the disposition of purchasers at destination points to postpone the placing of orders and in some instances those which had been placed were canceled. It is doubtless true that this condition in the lumber business was also partially due to the money stringency which developed about the same time these advances in rates became effective. The lumber industry has in recent months been greatly depressed and a large percentage of the mills have been shut down and are not now in operation. It is contended by complainants that this condition, while due in part to the general condition of depression throughout the country, is to a large extent due to the advances in rates. On the other hand, it is contended by defendants that this condition of the industry is due altogether to the general business depression.

100 While it is true that the cost of operating the railroads engaged in this traffic has materially increased in recent years, it is also true that the expense of operation of the mills has increased proportionately.

There can be no doubt that the present plight of this industry is to a great extent due to the general conditions referred to. On the other hand, it is apparent that the very material increases in the rates have in a substantial degree contributed to the present condition of the

industry. Some of the increases amounted to as much as 25 per cent of the old rates, resulting in a gross increase of $60 in freight charges on a carload of lumber weighing 60,000 pounds between points where the rate in effect before the increase would have amounted to $240. On a larger load the increase per car would, of course, be still more. This illustration, however, is made on the basis of the greatest increase shown in these tariffs, but the average increase is probably from 12½ to 15 per cent. It is claimed by the complainants that the advance averages $2.75 per 1,000 feet and that this exceeds the average profit to the lumber manufacturer.

The following statement shows for the three years named the total tons of freight, earning revenue, carried by the roads named; also number of tons of forest products carried and the percentages of these products to the whole tonnage. These are the carriers most interested in the advances of rates under consideration.

Name of road.	Tons of freight, earning revenue, carried.	Forest products.	
		Tons carried.	Percentage of total tonnage.
Northern Pacific Ry. Co.:			
1894 [a]	3,286,474	793,345	24.14
1903	12,791,717	5,090,387	39.79
1907	16,741,470	6,257,557	37.38
Great Northern Ry. Co.:			
1894	2,600,862	435,760	16.75
1903	13,819,429	2,889,699	20.92
1907	18,226,006	2,699,324	14.80
Chicago, Burlington & Quincy R. R. Co.:			
1894	10,637,385	[b]	[b]
1903	19,216,612		
1907	25,077,910		
Union Pacific R. R. Co.:			
1894 [c]	4,020,058	146,255	3.64
1903	5,760,548	332,858	5.78
1907	8,830,686	694,858	7.86
Oregon R. R. & Navigation Co.:			
1894 [d]	638,750	106,183	16.62
1903	2,350,500	685,567	29.05
1907	3,442,651	1,041,262	30.25
Oregon Short Line R. R. Co.:			
1894 [e]	1,087,950	62,349	5.73
1903	3,566,004	458,493	12.86
1907	5,138,513	741,271	14.43
Canadian Pacific Ry. Co.:			
1894	4,023,806	1,121,249	27.87
1903	10,180,847	2,011,620	19.76
1907	15,733,306	3,034,915	19.29
Chicago & Northwestern Ry. Co.:			
1894	12,858,820	1,797,755	13.98
1903	30,498,440	4,206,042	13.79
1907	37,579,539	5,570,386	14.82

[a] Report of receivers of Northern Pacific R. R. Co.
[b] Not reported separately.
[c] Report of Union Pacific Ry. Co.
[d] Report of Oregon Short Line & Utah Northern Ry. Co., lessee.
[e] Report of Oregon Short Line & Utah Northern Ry. Co., reorganized as Oregon Short Line R. R. Co., February 1, 1897.

101 Following is a statement showing net earnings of each system and per mile of line, net income, dividends declared, and surplus from operations of the same carriers for each of the ten years immediately preceding June 30, 1907. It also appears from the reports of some of these carriers that they have expended large sums

from their earnings in permanent improvements and betterment of their properties during this period, which have been charged to operating expenses and deducted from their earnings before showing their net incomes, as shown in the statement.

	Mileage operated, single track.	Net earnings.		Net income.	Total amount of dividends declared.	Surplus from operations of year.
		Amount.	Per mile of line.			
Northern Pacific Ry. Co.:						
1907	5,810.16	$30,845,515.53	$5,666.31	$23,473,929	$10,850,000	$12,623,929
1906	5,781.99	30,103,043.37	5,573.46	16,392,520	10,850,000	5,542,520
1905	5,676.26	23,889,127.18	4,494.70	13,866,932	10,850,000	3,016,932
1904	5,618.88	22,265,031.61	4,231.16	12,229,311	10,849,989	1,379,322
1903	5,426.23	22,085,011.98	4,320.58	11,724,074	10,074,943	1,649,131
1902	5,375.61	20,073,965.83	3,999.31	10,047,232	8,499,946	1,547,286
1901	5,284.13	15,920,840.01	3,121.65	7,202,619	6,200,000	1,002,619
1900	5,036.99	15,626,689.41	3,314.82	6,483,819	5,400,000	1,083,819
1899	4,887.17	13,696,221.54	2,991.55	5,633,283	4,600,000	1,033,283
1898	4,524.45	12,584,347.40	2,884.99	5,897,875	3,000,000	2,897,875
Great Northern Ry. Co.:						
1907	5,335.35	20,761,168.80	3,972.30	12,625,365	10,469,662	2,155,703
1906	5,183.11	23,361,145.46	4,535.65	14,333,090	9,148,521	5,184,569
1905	5,018.38	20,423,324.04	4,111.40	13,831,236	8,693,860	5,137,376
1904	4,888.53	18,207,516.82	3,743.36	12,116,107	8,683,925	3,432,182
1903	4,814.90	19,434,300.02	4,114.81	12,807,952	8,673,973	4,133,979
1902	4,551.25	14,359,513.76	3,454.77	10,342,911	8,225,921	2,116,990
1901	4,054.89	8,851,675.22	2,180.08	6,897,309	6,897,309	None.
1900	4,076.37	10,370,620.47	2,538.65	8,626,541	6,408,777	2,217,764
1899	4,094.08	9,714,648.60	2,411.44	5,638,226	3,851,034	1,787,192
1898	3,859.95	9,376,354.58	2,432.75	3,571,709	1,500,000	2,071,709
Chicago, Burlington & Quincy R. R. Co.:						
1907	8,875.07	23,520,812.34	2,653.70	13,141,931	7,758,737	5,383,194
1906	8,677.02	22,758,224.45	2,643.77	12,852,919	7,758,737	5,094,182
1905	8,561.64	23,683,688.59	2,769.13	13,829,905	7,758,737	6,071,168
1904	8,326.16	22,630,502.98	2,719.18	12,943,111	7,758,737	5,184,374
1903	8,306.75	23,905,157.49	2,878.39	13,395,047	7,758,455	5,636,592
1902	7,971.13	19,360,888.44	2,437.98	10,040,064	7,475,063	2,565,001
1901	7,789.46	17,272,517.28	2,227.81	8,159,520	6,652,557	1,506,963
1900	6,412.48	14,202,599.57	2,250.64	8,093,631	5,820,678	2,273,953
1899	6,230.93	13,286,787.94	2,243.64	6,852,210	5,238,371	1,613,839
1898	5,859.70	12,740,194.82	2,174.21	5,215,580	3,690,126	1,525,454
Union Pacific R. R. Co.:						
1907	3,031.41	19,678,798.80	6,547.99	27,932,022	23,531,012	4,401,010
1906	2,955.45	17,620,776.06	5,962.13	19,249,819	19,533,324	a 283,505
1905	2,955.45	16,165,393.71	5,468.38	15,051,010	11,087,014	3,963,996
1904	2,955.70	14,640,363.51	4,953.26	12,088,376	8,333,500	3,754,876
1903	2,955.70	11,488,641.92	3,885.65	8,769,093	8,333,084	436,009
1902	2,941.84	12,793,205.70	4,271.52	8,038,356	8,186,634	a 148,278
1901	3,033.08	11,040,176.54	3,666.80	8,304,365	7,979,504	324,771
1900	2,967.80	10,507,540.83	3,594.23	8,137,811	7,303,628	834,183
1899	2,848.38	9,071,606.79	3,746.12	6,583,368	3,750,000	2,833,368
1898 b	1,894.29	2,709,898.71 4,628,511.21	1,465.32 2,539.94	1,302,741	.....	1,302,741
Oregon R. R. & Navigation Co.:						
1907	1,245.82	5,972,933.93	4,794.42	5,793,784	440,000	5,353,784
1906	1,130.58	6,072,350.40	5,371.00	5,597,153	440,000	5,157,153
1905	1,130.58	5,296,616.70	4,662.89	4,618,561	440,000	4,178,561
1904	1,123.32	4,749,046.55	4,227.09	3,932,243	440,000	3,492,243
1903	1,123.32	5,111,386.88	4,553.21	4,265,327	440,000	3,825,327
1902	1,112.16	4,403,193.91	3,967.73	3,490,582	440,000	3,050,582
1901	1,093.59	3,856,344.48	3,526.32	2,795,506	440,000	2,355,506
1900	1,093.59	3,660,787.85	3,434.00	2,498,824	440,000	2,058,824
1899	1,059.35	2,871,057.50	2,710.21	1,652,827	440,000	1,212,827
1898	1,059.35	2,805,503.10	2,648.41	1,753,855	790,000	963,855
102 Oregon Short Line R. R. Co.:						
1907	1,407.64	9,843,780.77	7,064.53	11,141,824	8,238,030	2,903,794
1906	1,112.37	8,137,171.25	7,316.61	6,673,662	.....	6,673,662
1905	1,127.68	7,350,278.05	6,628.02	3,417,950	.....	3,417,950
1904	1,122.65	6,745,183.17	6,033.94	863,879	.....	863,879
1903	1,516.05	7,089,072.58	4,954.05	3,740,770	.....	3,740,770
1902	1,438.94	6,097,512.31	4,237.50	3,435,802	.....	3,435,802
1901	1,439.00	5,266,753.36	3,676.68	2,586,496	.....	2,586,496
1900	1,438.40	4,754,659.84	3,305.52	1,838,839	.....	1,838,839
1899	1,438.44	3,121,259.94	2,169.89	346,364	.....	346,364
1898	1,438.44	3,085,080.53	2,153.46	158,995	.....	158,995

a Deficit.

b Report for five months ending June 30, 1898.

	Mileage operated, single track.	Net earnings.		Net income.	Total amount of dividends declared.	Surplus from operations of year.
		Amount.	Per mile of line.			
Canadian Pacific Ry. Co.:						
1907	9,153.90	$26,027,715.82	$2,992.26	$19,156,034	$8,404,295	$10,751,739
1906	8,776.90	23,508,723.45	2,713.73	16,592,216	7,646,800	8,945,416
1905	8,508.00	15,877,256.20	1,868.28	9,105,686	6,525,733	2,579,953
1904	8,352.10	14,538,565.74	1,744.00	8,318,277	6,373,407	1,944,870
1903	7,748.40	16,101,106.67	2,078.00	10,071,461	5,010,920	5,060,541
1902	7,587.80	14,309,488.83	1,885.86	7,709,914	4,496,840	3,213,074
1901	7,503.20	12,310,574.87	1,627.67	5,736,965	4,448,173	1,288,792
1900	7,467.40	12,628,081.29	1,691.09	7,875,258	4,204,840	3,670,418
1899	6,951.50	11,325,046.80	1,628.86	4,883,778	3,072,709	1,811,069
1898	6,567.70	10,809,127.00	1,645.80	4,378,999	2,805,873	1,575,125
Chicago & Northwestern Ry. Co.:						
1907	7,622.91	24,089,905.90	3,160.45	15,740,506	7,910,178	7,830,388
1906	7,453.58	23,500,578.80	3,175.57	8,800,553	6,483,614	2,316,639
1905	7,408.13	19,184,040.34	2,589.59	5,817,822	5,174,924	642,898
1904	7,411.77	17,819,630.12	2,404.09	5,389,741	5,174,924	224,817
1903a	7,365.63	18,532,168.51	2,879.13	5,543,431	4,862,014	681,417
1902	5,030.26	17,595,469.07	3,196.28	5,887,773	4,529,368	1,358,305
1901	5,585.53	17,390,217.50	3,123.46	5,752,037	5,044,394	1,827,643
1900	5,571.23	17,002,849.24	3,240.98	5,457,042	3,914,304	1,542,638
1899	5,085.02	14,604,558.15	2,880.43	7,518,377	3,523,270	3,995,107
1898	5,085.02	13,319,604.02	2,622.30	5,670,835	3,719,824	2,140,012

a The Fremont, Elkhorn & Missouri Valley R. R. (1,365.76 miles) was purchased by and merged in the Chicago & Northwestern Ry., February 28, 1903.

A comparison of the rates from the west with those applying on yellow-pine lumber from southern producing points, covering substantially similar distances, shows that these western rates yield greater revenue per ton per mile than the rates from the south. The rates in effect prior to the advances complained of had been in force for long periods of time and in a few instances the carriers had voluntarily maintained rates lower than those in effect immediately prior to these advances. The lumber trade had adjusted itself to the conditions obtaining under those rates, so that the vast interests affected were in a large measure dependent upon the continuance thereof. The defendants derive a large proportion of their revenues from the lumber tarffic, and it clearly appears that they have not only earned large profits on their general business, but that the transportation of lumber under the old rates yielded a commensurate part thereof and a reasonable return for the service performed.

In the case of Central Yellow Pine Asso. v. Illinois Central R. R. Co. et al., 10 I. C. C. Rep., 505, the commission used the following language:

"When carriers advance a rate which has been for some time in force, the burden of proof is upon them to show sufficient grounds for such advance.

"Conceding, however, for argument's sake, that the lumber business had at the date of the advance become phenomenally prosperous and remunerative, this could not justify an advance of a rate already reasonably high.

103 "The test of the reasonableness of a rate is not the amount of the profit in the business of a shipper or manufacturer, but whether the rate yields a reasonable compensation for the service

rendered. If the prosperity of the manufacturer is to have the controlling influence, this would justify a higher rate on the traffic of the prosperous manufacturer than on that of one less prosperous. The right to participate in the prosperity of a shipper by raising rates is simply a license to the carrier to appropriate that prosperity, or, in other words, to transfer the shipper's legitimate profit in his business from the shipper to the carrier."

In H. H. Tift et al. v. Southern Ry. Co. et al., 10 I. C. C. Rep., 548, the commission said:

"The maintenance of materially lower rates for such long periods of time brings this case within the rule that 'where an advance is made in rates which have long been maintained and the evidence shows that the traffic affected is large, important, and constantly increasing, the advance will be held unjust unless it is satisfactorily explained.'"

In reviewing the decision of the commission in Central Yellow Pine Asso. v. Illinois Central R. R. Co. et al. (Illinois Central R. R. Co. v. I. C. C., 206 U. S., 466) the Supreme Court used the following language:

"The question submitted to the commission, as we have said, with tiresome repetition, perhaps, was one which turned on matters of fact. In that question, of course, there were elements of law, but we can not see that any one of these or any circumstances probative of the conclusion was overlooked or disregarded."

And in Southern Ry. Co. v. Tift, 206 U. S., 436, the Supreme Court stated that—

"this case is, though variant in some detail of facts, similar in principle and depends upon the same legal considerations as Illinois Central R. R. Co. v. I. C. C., just decided."

It is therefore fair to assume that the Supreme Court has approved the principle that "Where an advance is made in rates which have long been maintained and the evidence shows that the traffic affected is large, important, and constantly increasing, the advance will be held unjust unless it is satisfactorily explained." And we think this assumption is fully borne out by the language of the court in a later case, I. C. C. v. Chicago Great Western Ry. Co., 209 U. S., 119:

"It must also be remembered that there is no presumption of wrong arising from a change of rate by a carrier. The presumption of honest intent and right conduct attends the action of carriers as well as it does the action of other corporations or individuals in their transactions in life. Undoubtedly when rates are changed the carrier making the change must, when properly called upon, be able to give a good reason therefor, but the mere fact that a rate has been raised carries with it no presumption that it was not rightfully done."

This is a mere affirmance of what the act to regulate commerce itself recognizes as a right of the carriers, viz, the right to initiate rates. And it must be apparent that were a "presumption of wrong" to attach to any change in rates which the carriers are authorized to establish this must result in a denial of the free exercise of the

104 right guaranteed by the act. But it would be going far to say that the language above quoted is authority for the inference that the Supreme Court does not still recognize the principle that a rate which has been in force for a long period of years and with respect to which commercial conditions have been adjusted—which rate has presumably afforded a reasonable return to the carriers—may not be materially advanced without imposing upon the carriers the burden of justifying the increase.

Touching important facts similar to those involved in these cases, in the case of Tift v. Southern Ry. Co. (138 Fed. Rep., 764), Judge Speer, whose decree was affirmed by the circuit court of appeals and the Supreme Court of the United States, said:

"After careful consideration of the extensive record, there seems to have been an utter absence of excuse or justification for the concerted action of the railroads which advanced the rates on lumber throughout the South. The vast increase of the lumber traffic had resulted in large increase of net revenue for those roads. The service was inexpensive. It required neither rapidity of movement nor specially equipped cars, and such simple equipment as was needed the shippers were obliged to furnish and pay for. The railroads were required neither to load nor unload the cars. This was done by the consignor and consignee. The lumber carried was neither fragile nor perishable, and the risk therefore from loss or damage was inappreciable. Mr. Tift, the principal witness for the complainants, and one of the largest lumber men of the State, testified that for thirty years he had not been compelled to present a claim for damage on lumber shipped from his mill. Nor were there any exigencies in the financial condition of the principal defendants which called for so vast a contribution to their treasuries from an industry whose product forms such a large part of their tonnage, and which is so indispensable to the public welfare."

It seems clear from all the facts appearing that the rates in effect prior to the advances made in November, 1907, to points of destination, generally, west of the Missouri River were fairly remunerative. To certain points farther east, involving longer hauls, it is believed that there was justification for some advance in view of the less revenue per ton per mile accruing to the carriers from this traffic.

It is, therefore, the opinion of the commission upon full hearing and consideration of all the questions and matters presented in these proceedings, that the existing rates involved herein applying from points on defendants' lines in Washington, Oregon, Idaho, Montana, and British Columbia, to all points in the territory on and west of a line running through and including Pembina and Grand Forks, N. Dak., Moorhead and Breckenridge, Minn., Sioux City and Council Bluffs, Iowa, St. Joseph and Kansas City, Mo., and thence to Port Arthur, Tex., along the Kansas City Southern Railway, including all points that now take the same rates as any of the points located on said line between and including Sioux City, Iowa, and Kansas City, Mo., are unreasonable and unjust to the extent that they exceed those

that were in effect over the lines of the defendant carriers, respectively, on October 31, 1907, between the respective points of
105 origin and destination shown in the rate schedules hereinbefore specified. It is also the opinion of the commission that the rates now in effect from said points of origin to points in territory east of the territory above described and excluding all points that now take the same rates as any of the points located on said line between and including Sioux City, Iowa, and Kansas City, Mo., are unreasonable and unjust to the extent that they exceed 5 cents per 100 pounds above the rates in effect October 31, 1907. This increase of 5 cents per 100 pounds over the old rates must be in conformity with the differentials prescribed by the commission in case No. 1348, infra. As stated in our report in case No. 1327, supra, the rates to points in Minnesota east of the line mentioned should be graded up from that line so as to reach the maximum increase at Minneapolis, St. Paul, Minnesota Transfer, and Duluth. The rates from the Missouri River crossings should be graded up and the maximum increase of 5 cents be reached at the Mississippi River. Chicago rates should apply to all points between the Mississippi River crossings, East Dubuque to East St. Louis, inclusive, and Chicago. The rates to St. Louis, and points taking the same rates, should not exceed the rates to Chicago. This adjustment preserves the differential fixed by the carriers under the advanced rates between the Missouri River and Chicago, and also maintains the parity fixed by defendants between St. Louis and Chicago.

While permitting some rates to be increased, this adjustment also reduces some rates below what they were immediately prior to the increase complained of. We think that complainants are entitled to reparation only on account of shipments upon which charges were collected in excess of the rates between the same points which were in effect on October 31, 1907; that in instances in which the rates herein prescribed are not lower than the rates which were in effect between the same points on October 31, 1907, such reparation should be measured by the difference between the rates actually paid and those herein prescribed; and that in instances in which the rates herein prescribed are lower than the rates which were in effect between the same points on October 31, 1907, such reparation should be measured by the difference between the rates actually paid and those which were in effect between the same points on October 31, 1907.

An order will be made in accordance with these conclusions.

KNAPP, chairman, and HARLAN, commissioner, dissent on the general grounds stated in their dissenting opinion in Oregon & Washington Lumber Manufacturers' Association et al. v. Union Pacific R. R. Co. et al., No. 1327, supra.

(Endorsed:) Filed December 16th, 1908. Henry D. Lang, clerk.

106 Thereafter and on January 4th, 1909, the following præcipe, setting demurrer down for hearing and order entered thereon were filed and entered in said cause, to wit:

107 Circuit Court of the United States, District of Minnesota, Third Division.

NORTHERN PACIFIC RAILWAY CO. ET AL.
vs.
INTERSTATE COMMERCE COMMISSION.

Præcipe for order setting down demurrer for hearing.

To the clerk of the above-named court:

Please enter order setting down demurrer of defendant for hearing at next rule day.

JAMES B. KERR.
HALE HOLDEM,
F. C. DILLARD,
W. W. COTTON,
Solicitors for Complainants.

(Endorsed:) Præcipe for order setting demurrer down for February rules. Order entered T. M. vol. 39, page 91. Filed January 4th, 1909. Henry D. Lang, clerk.

108 United States Circuit Court for the District of Minnesota, Third Division.

(Term minutes: June term, A. D. 1908—January 4th, 1908.)

Monday morning.

Court opened pursuant to adjournment.
Present, Hon. Milton D. Purdy, judge; Henry D. Lang, clerk.

NORTHERN PACIFIC RAILWAY COMPANY ET AL.
vs.
INTERSTATE COMMERCE COMMISSION.
} Equity. No. 884.

Pursuant to a præcipe this day filed herein signed by the solicitors for the complainants, it is by the court ordered that the demurrer of defendant be, and the same hereby is, set down for hearing at the next rule day, to wit, February 1st, A. D. 1909, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard.

A true record.
Attest:

HENRY D. LANG, *Clerk.*

Thereafter and on the same day the following replication was filed in said cause, to wit:

109 In the Circuit Court of the United States for the District of Minnesota, Third Division.

NORTHERN PACIFIC RAILWAY COMPANY; GREAT Northern Railway Company; Chicago, Burlington & Quincy Railroad Company; Union Pacific Railroad Company; Oregon Short Line Railroad Company; and Oregon Railroad and Navigation Company, complainants, *vs.* THE INTERSTATE COMMERCE COMMISSION, defendant.	In Equity. No. 884.

Replication.

These repliants saving and reserving to themselves all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the defendant for replication thereunto, saith that they do and will aver, maintain, and prove their said amended bill to be true, certain, and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive, and insufficient in the law to be replied unto by these repliants, without that, that any other matter or thing in the said answer contained, material, or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed, or denied, is true; all which matters and things these repliants are ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by their said bill they hath already prayed.

JAMES B. KERR,
HALE HOLDEN,
W. W. COTTON,
F. C. DILLARD,
Solicitors for Complainants.

(Endorsed:) Replication. Filed January 4th, 1909. Henry D. Lang, clerk.

110 Thereafter, and on January 11th, 1909, the following instructions of court in relation to hearing upon demurrer was filed in said cause, to wit:

111 ST. LOUIS, MISSOURI, *January 9, 1909.*

Hon. HENRY D. LANG,
Clerk U. S. Circuit Court, St. Paul, Minnesota.

DEAR SIR: Regarding the three cases, Nos. 883, 884, and 885, the railroad cases against the Interstate Commerce Commission pending in St. Paul, in which demurrers have been interposed, you may notify the lawyers that the circuit judges will be in St. Louis until the first of April; that during April they will be separated, and that they will be in St. Paul during the session of the court of appeals in May. The cases may be heard at St. Paul at some convenient time after May 1st, or they may be heard at St. Louis at some convenient time prior to April 1st, if they desire to urge their hearing at so early a date. Personally I should prefer to have them heard at St. Paul, but the judges will accommodate the lawyers as to the time of hearing. Before fixing upon the time, however, we should like notice of the time desired, because some of the judges are liable to be out of the city here unless we agree upon the time.

Yours, truly,

WALTER H. SANBORN,
U. S. Circuit Judge.

(Endorsed:) Instructions of court in relation to hearing upon demurrer. January 11th, 1909. Henry D. Lang, clerk, by Louise B. Trott, deputy.

Thereafter and on February 15th, 1909, the following order appointing F. N. Dickson special master was filed and entered in said cause, to wit:

112 In the Circuit Court of the United States for the District of Minnesota.

NORTHERN PACIFIC RAILWAY CO. ET AL.
vs.
INTERSTATE COMMERCE COMMISSION.

Come now the parties, the complainants, by F. C. Dillard, Esq., and the defendant, by Luther M. Walter, Esq., and after due consideration,

It is hereby ordered that Frederick N. Dickson, Esq., of St. Paul, Minnesota, be, and he is hereby, appointed special master in chancery in this case.

The special master hereby appointed is empowered and directed to take and report to the court the evidence in this cause; to examine the same; to make the necessary computations; to find and state the facts in this case, and to report advisory conclusions of law and recommend a proper form of decree herein.

It is further ordered that upon the completion of his report, the special master shall notify counsel for the respective parties thereof

and shall exhibit said report to them or deliver to them copies thereof, that each of the parties to this suit may thereupon file exceptions to the report with the master within thirty days after its exhibition or delivery to their counsel, and the master shall thereupon consider and sustain or overrule each of said exceptions and shall thereafter return to the court his report, the said exceptions, his rulings thereon, the evidence and any modifications of or additions to his report he may deem it just and proper to make in view of the exceptions.

Upon the filing of such report and exceptions, this cause shall stand for hearing before the court upon said exceptions as though
113 they had been made at the time specified in rule 83 in equity, but further exceptions may be filed by any party to the suit within one month from the time of the return of said report to the court.

It is further ordered that the time in which the complainants shall take their evidence is fixed and limited to sixty days from the date hereof; that the time within which the defendant shall take their evidence in defense is fixed and limited to forty-five days thereafter and the time within which the complainants shall take their evidence in rebuttal is fixed and limited to thirty days thereafter.

February 13, A. D. 1909.

WALTER H. SANBORN,
WILLIS VAN DEVANTER,
WILLIAM C. HOOK,
ELMER B. ADAMS,
Circuit Judges.

(Endorsed:) Order appointing F. N. Dickson special master. Entered term minutes, volume 29, page 159. Filed February 15th, 1909. Henry D. Lang, clerk, by Louise B. Trott, deputy.

Thereafter and on February 16th, 1909, the following oath of F. N. Docksin, as special master, was filed and entered in said cause, to wit:

114 United States Circuit Court, District of Minnesota, Third Division.

NORTHERN PACIFIC RAILWAY CO. ET AL., complainants,
vs.
INTERSTATE COMMERCE COMMISSION.
No. 884. Equity.

I, Frederick N. Dickson, do solemnly swear that I will support the Constitution of the United States, and faithfully, impartially, and to the best of my ability, perform my duties as special master in chancery in the above-entitled cause. So help me God.

FREDERICK N. DICKSON.

Subscribed and sworn to before me this 16th day of February, A. D. 1909.

[SEAL OF COURT.] LOUISE B. TROTT,
Deputy Clerk U. S. Circuit Court for the District of Minnesota.

(Endorsed:) Oath of Frederick N. Dickson, special master. Entered Miscellaneous Records, vol. 1, page 180. Filed February 16th, 1909. Henry D. Lang, clerk, by Louise B. Trott, deputy.

Thereafter and on the same day the following stipulation postponing demurrer was filed in said cause, to wit:

115 In the Circuit Court for the United States for the District of Minnesota.

NORTHERN PACIFIC RY. CO. ET AL.
vs.
INTERSTATE COMMERCE COMMISSION.
No. 884.

In this cause it is stipulated and agreed that the demurrers may be postponed and heard at the final hearing of the case on the merits, subject to the right of the court, or judges thereof, to set them down for hearing at an earlier day.

HALE HOLDEN,
F. C. DILLARD,
Solicitors for Complainants.
LUTHER M. WALTER,
Solicitor for Defendant.

FEBRUARY 3RD, 1909.

(Endorsed:) Stipulation postponing demurrer. Filed February 16th, 1909. Henry D. Lang, clerk, by Louise B. Trott, deputy.

And thereafter on the same day the following order postponing hearing on demurrer was entered of record in said cause, to wit:

116 United States Circuit Court, District of Minnesota, Third Division.

NORTHERN PACIFIC RAILWAY CO. ET AL., COMPLAINANTS,
vs.
INTERSTATE COMMERCE COMMISSION, DEFENDANT.

In accordance with a stipulation to that effect, signed by the solicitors for the respective parties and filed herein, it is by the court ordered that the demurrer may be postponed and heard at the final hearing of the case on the merits, subject to the right of the court, or judges thereof, to set them down for hearing at an earlier date.

WALTER H. SANBORN,
WILLIS VAN DEVANTER,
WILLIAM C. HOOK,
ELMER B. ADAMS,
Circuit Judges.

(Endorsed:) Order postponing hearing on demurrer. Entered T. M., vol. 39, page 164. Filed February 16th, 1909. Henry D. Lang, clerk, by Louise B. Trott, deputy.

Thereafter and on March 15th, 1909, the following order appointing Robert S. Taylor stenographer was filed and entered in said cause, to wit:

117 In the Circuit Court of the United States for the District of Minnesota.

NORTHERN PACIFIC RAILWAY CO. ET AL., COMPLAINANTS,
vs.
INTERSTATE COMMERCE COMMISSION.
No. 884.

It is hereby ordered that Robert S. Taylor be, and he is hereby, appointed stenographer, empowered and directed to take and report, under the direction and orders of Honorable Frederick N. Dickson, the special master herein, the evidence that may be offered in the case above entitled.

WALTER H. SANBORN,
Circuit Judge.

ST. LOUIS, MO., *March 15, 1909.*

(Endorsed:) Order appointing Robert S. Taylor, stenographer. Entered T. M., vol. 39, page 202. Filed March 15th, 1909. Henry D. Lang, clerk, by Louise B. Trott, deputy.

Thereafter and on May 15th, 1909, the following stipulation extending time to take complainants' testimony and order were filed and entered in said cause, to wit:

118 Circuit Court of the United States for the District of Minnesota, Third Division.

NORTHERN PACIFIC RAILWAY COMPANY ET AL., complainants, *vs.* THE INTERSTATE COMMERCE COMMISSION, defendant.	In equity. No. 884.

Stipulation.

It is hereby stipulated and agreed by counsel for the respective parties that the time for taking complainants' evidence may be extended until May 15, 1909, and that on or before that day or immediately thereafter the time may, by order of court, be fixed for the taking of evidence in behalf of the defendant, as well as time thereafter, if desired, for taking evidence by complainants in rebuttal.

Dated this 15th day of April, 1909.

F. C. DILLARD,
CHAS. DONNELLY,
HALE HOLDEN,
Solicitors for Complainants.
LUTHER M. WALTER,
Solicitor for Defendant.

(Endorsed:) Stipulation extending complainants time to take testimony to May 15, 1909. Filed April 15, 1909. Henry D. Lang, clerk.

119 Circuit Court of the United States for the District of Minnesota, Third Division.

NORTHERN PACIFIC RAILWAY COMPANY ET AL., complainants, *vs.* THE INTERSTATE COMMERCE COMMISSION, defendant.	In equity. No. 884.

Order.

Upon reading the stipulation filed in this cause this day, duly signed by counsel for the parties hereto, it is

Ordered, that the time heretofore granted to complainants for taking testimony in this cause be extended until May 15, 1909; that

defendant may on or before said date, or immediately thereafter, apply to the court, by stipulation or otherwise, for the fixing of a date for the taking of its testimony herein, at which time an order will be entered for that purpose, and also setting a time for taking by complainants of testimony in rebuttal after the completion of defendant's testimony so to be provided for.

In other respects the order heretofore made touching the taking of testimony and the report of the master appointed herein shall remain as provided for in the original order.

Dated April 15, 1909.

WALTER H. SANBORN,
WILLIS VAN DEVANTER,
ELMER B. ADAMS,
Circuit Judges.

(Endorsed:) Order extending time to take complainants testimony. Entered T. M., vol. 39, page 259. Filed April 23rd, 1909. Henry D. Lang, clerk.

120 Thereafter and on March 11, 1909, the following stipulation to tax costs of H. Lee, crier, Chicago, was filed in said cause, to wit:

121 In the Circuit Court of the United States for the District of Minnesota, Third Division.

NORTHERN PACIFIC RAILWAY COMPANY ET AL.
vs.
INTERSTATE COMMERCE COMMISSION.
} In equity. No. 884.

Stipulation to tax costs.

It is agreed that the clerk shall tax in this cause the sum of $2.50 per day for eight days in favor of H. Lee, court crier, as compensation to him for attendance at the argument of this cause before special master, in the city of Chicago, February 8th to 16th, inclusive. These costs to be adjudged against the losing party in this cause in the final event of the action.

F. C. DILLARD,
CHAS. DONNELLY,
HALE HOLDEN,
Attorneys for Complainants.
LUTHER M. WALTER,
J. N. TEAL,
W. A. WIMBISH,
Attorneys for Defendant.

Dated at Chicago, Illinois, March 8th, 1910.

(Endorsed:) Stipulation to tax costs of H. Lee, court crier. Filed Mar. 11, 1910. Henry D. Lang, clerk, by Louise B. Trott, deputy.

Thereafter and on Jan. 5, 1910, the following stipulation as to record for submission to master, etc., was filed in said cause, viz:

122 DECEMBER 4, 1909.

UNION PACIFIC R. R. CO. ET AL.
v.
INTERSTATE COMMERCE COMMISSION. } In equity. No. 883.

NORTHERN PACIFIC RY. CO. ET AL.
v.
INTERSTATE COMMERCE COMMISSION. } In equity. No. 884.

GREAT NORTHERN RY. CO. ET AL.
v.
INTERSTATE COMMERCE COMMISSION. } In equity. No. 885.

Stipulation.

In addition to the stipulation entered into at St. Paul concerning the printing of the record in the cases before the Interstate Commerce Commission, the following supplementary agreement, subject to the objections heretofore made as to the admissibility of testimony, is hereby entered into between counsel for the respective parties, as follows, to wit:

1. The printed abstract of the oral testimony fairly presents the substance of all that character of testimony offered before the Interstate Commerce Commission on the hearing before it of these cases, and the printed abstract fairly presents the selected exhibits or the substance thereof presented to said commission on said hearing.

2. The other exhibits presented on the hearing aforesaid or reports and documents on file with the commission or referred to on the hearing before said commission in said cases may be considered by the master and used by either party hereto on the hearing before him without the printing thereof.

3. Either of the parties hereto may print and file with the master or the court such portions thereof as counsel may deem material, but if the same be not printed for the hearing before the master no rights to use the same as evidence or rights to print the same for the use of the court thereafter are waived.

F. C. DILLARD,
CHAS. DONNELLY,
HALE HOLDEN,
Solicitors for Complainants.
LUTHER M. WALTER,
JOSEPH N. TEAL,
WILLIAM A. WIMBISH,
Solicitors for Defendant.

(Endorsed:) Stipulation as to record for submission to master, &c. Filed Jan. 5, 1910. Henry D. Lang, clerk.

123 Thereafter and on July 30th, 1910, the following stipulation to modify order and order were filed and entered of record in said cause, to wit:

124 In the Circuit Court of the United States, District of Minnesota, Third Division.

NORTHERN PACIFIC RAILWAY COMPANY ET AL., Complainants, *vs.* INTERSTATE COMMERCE COMMISSION, Defendant.	In equity. No. 884.

Stipulation.

It is hereby stipulated and agreed that the order entered herein on February 15, 1909, shall be modified, and that either party hereto shall file its exceptions to the master's report on or before August 19, 1910; and that an order may be entered herein setting down said exceptions for hearing before the master in the city of St. Paul in August 19, 1910; that said order may provide that the master shall pass upon said exceptions and file his report, said exceptions, a report of his action thereon, and all other matters contemplated by the order of February 15, 1909, in the clerk's office on or before August 27, 1910; that said order shall provide that either party hereto shall file such additional exceptions as may be desired in the clerk's office on or before September 10, 1910, and that this cause be set down for hearing before the circuit judges of the city of St. Paul on September 15, 1910.

HALE HOLDEN,
Solicitor for Complainants.

Dated this 27th day of July, 1910.

LUTHER M. WALTER,
Solicitor for Defendant.

(Endorsed:) Stipulation to modify order. Filed July 30th, 1910. Henry D. Lang, clerk. By Louise B. Trott, deputy.

125 In the Circuit Court of the United States for the District of Minnesota, Third Division.

NORTHERN PACIFIC RAILWAY CO. ET AL., Complainants, *vs.* INTERSTATE COMMERCE COMMISSION, DEFENDANT.	In equity. No. 884.

Order.

Upon reading the stipulation dated July 27, 1910, of the parties hereto, duly filed herein, and upon due consideration thereof.

It is ordered, That the order heretofore entered on February 15, 1909, appointing Honorable Frederick N. Dickson as special master, and defining his duties touching the making of a report, hearing exceptions thereon, and filing his said report, exceptions, and rulings thereon in the office of the clerk in this court, be, and the same is hereby, modified; and it appearing that the special master did on July 22, 1910, deliver a copy of his report to each of the parties hereto in lieu of the provisions of said order,

It is ordered, That either party hereto shall file its exceptions, if any, to the master's report with him on or before August 19, 1910, and that on that day at the city of St. Paul the special master shall hear arguments upon any exceptions so filed and presented to him to his report; that on August 27, 1910, the special master shall file with the clerk of this court his report, any exceptions thereto filed with him as aforesaid, a statement of his action and rulings thereon, together with a form of decree recommended by him to be entered in this cause.

It is further, in accordance with the stipulation as aforesaid, That either party hereto shall file with the clerk in this court on or
126 before September 10, 1910, such further exceptions as may be taken, and that this cause be, and the same is hereby, set down for hearing before the circuit judges of this circuit, in the United State courtroom at the city of St. Paul, Minnesota, on September 15, 1910, upon the master's report and the exceptions thereto, including those exceptions filed with him as aforesaid, and such additional exceptions as may be filed in the clerk's office as provided for in this order.

WILLIS VAN DEVANTER,
United States Circuit Judge.

Dated this 30th day of July, 1910.

(Endorsed:) Order. Entered T. M. Vo. 42, page 118 and 119. Filed July 30th, 1910. Henry D. Lang, clerk. By Louise B. Trott, deputy.

Thereafter and on August 27th, 1910, the following master's report was filed in said cause, to wit:

127 In the Circuit Court of the United States for the District of Minnesota, Third Division.

UNION PACIFIC RAILROAD COMPANY, OREGON SHORT LINE RAILROAD COMPANY, OREGON RAILROAD & NAVIGATION COMPANY, SOUTHERN PACIFIC RAILWAY COMPANY, NORTHERN PACIFIC RAILWAY COMPANY, GREAT NORTHERN RAILWAY COMPANY, CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, AND OREGON CALIFORNIA RAILROAD COMPANY, complainants, *vs.* INTERSTATE COMMERCE COMMISSION, DEFENDANT.	No. 883.

NORTHERN PACIFIC RAILROAD COMPANY, GREAT Northern Railway Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad & Navigation Company, complainants,
vs.
INTERSTATE COMMERCE COMMISSION, DEFENDANT. } No. 884.

GREAT NORTHERN RAILWAY COMPANY, NORTHERN Pacific Railway Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad & Navigation Company, and Southern Pacific Company, complainants,
vs.
INTERSTATE COMMERCE COMMISSION, DEFENDANT. } No. 885.

Master's report.

These three suits were begun by the carriers parties complainant hereto to enjoin the enforcement of certain orders of
128 the Interstate Commerce Commission prescribing maximum rates for the future transportation of lumber in carload lots from points on the Pacific coast to points in various States and Territories east and southeast of the points of origin. In the case of No. 883, called the Union Pacific case, an injunction is sought against an order made by the commission in its docket No. 1327, upon a complaint brought by the Oregon and Washington Lumber Manufacturers' Association and others against the Union Pacific Railroad Company and others. The complaint alleged that an advance in the rates on lumber and other forest products established by the defendants and other participating carriers from points in Oregon, Washington, Idaho, Montana, and British Columbia to points in other States therein set forth were unreasonable. The rates prescribed by the commission were the same as those in effect immediately prior to November 1, 1907, except that the rates to all points on and east of a line drawn from Pembina, North Dakota, south to Port Arthur, Texas, subject to minor exceptions, might be increased not to exceed 5 cents per one hundred pounds.

In the case of No. 884, called the Northern Pacific case, the bill attacks an order of the commission made in its docket No. 1329 and No. 1335, upon complaints filed by the Pacific Coast Lumber Manufacturers' Association and the Southwest Washington Lumber Manufacturers' Association, respectively. Those complaints attack the reasonableness of defendant's rates substantially as complained of in the Union Pacific case, docket No. 1327.

In the case of No. 885, called the Great Northern case, the bill attacks an order prescribing rates for the future on lumber and

forest products made in its docket No. 1348, upon complaint of the Potlatch Lumber Company and others. The rates attacked
129 had been advanced on November 1, 1907, and applied from points of origin in the States of Washington, Oregon, and Idaho, east of the Cascade Mountains, commonly known as interior points. The points of destination were in States south and east of the States in which were the points of origin. In this case the commission established rates to the various points of destination referred to in numbers 1327, 1329, and 1335, lower than the coast rates group by differentials, beginning at not less than 2 cents per one hundred pounds, and graded up to not less than 6 cents per one hundred pounds from the group west of Spokane. From the Spokane group the differentials graded from 3 cents to 7 cents per one hundred pounds.

All these orders were effective August 15, 1908, but were later extended by order of the commission so as to become effective October 15, 1908. The rates so prescribed by the commission are now and have been continuously in effect since said latter date, and they expire by limitation of the statute on October 15, 1910.

These three cases were all referred to the master to hear and report findings of facts and recommendations for a decree and were tried together.

It is conceded that all technical requirements of the statute necessary to properly bring the matter before the Interstate Commerce Commission and to confer on the commission authority to determine and prescribe rates have been complied with. The bills allege in substance that in making the various orders the commission acted without warrant of law in that the act to regulate commerce as amended by the so-called Hepburn bill of June 29, 1906, is unconstitutional and void because it confers upon the commission executive, legislative, and judicial powers; and for the further reasons that the rates prescribed by the carriers and which the commission reduced were low, just, and reasonable, and that the rates pre-
130 scribed by the commission in lieu thereof were and will be for more than three years from the date of the filing of the bills unjust and inadequate compensation for the service rendered; that the making of the orders complained of was pro tanto depriving the complainants of their property without due process of law in violation of the 5th and 14th amendments of the Federal Constitution; that sections 15 and 16 of the act to regulate commerce insofar as they make the orders of the commission effective of their own force prior to a hearing in a court of justice upon the question of the reasonableness of the rates prescribed in said orders, are void as being in conflict with the Federal Constitution, which provides that all judicial power is vested in the courts of the United States; that section 16 of the act to regulate commerce is void for the additional reason that it prescribes that the carrier failing to comply with an order of the commission shall forfeit to the United States the sum of $5,000.00 for each day said carrier fails to obey said order, notwith-

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standing that the question of the unreasonableness of the rates has not been judicially investigated in any court of law, and that it deprives complainants of their property without due process of law, contrary to article five of the amendments to the Constitution of the United States.

The bills further allege that upon the hearings of the case before the commission no evidence was considered or offered which in any wise showed, or tended to show, that the rates complained of were excessive, unjust, or unreasonable, and that the commission entered the orders complained of without any justification in fact therefor and without any evidence or finding of fact that said rates fixed by the defendants before the commission were excessive, unjust, and unreasonable; that the circumstances and conditions surrounding the transportation of lumber existing on November 1, 1907, were
131 wholly different from those existing at the time when the rates in effect prior to said date were made; that the commission held as a matter of law that the continuance of such rates raised a presumption that the higher rates were unjust and unreasonable; that in such holding the commission acted erroneously, through a mistake and misapprehension of the law and without authority; that the rates so fixed by the commission are not and will not be sufficient to pay the cost of conducting the transportation aforesaid and any just or fair return upon the value of the property used in said transportation, and bear no just or fair relation to the rates on through traffic moving over the complainants' lines; and that the rates prescribed by the commission will impose an undue and unreasonable burden, not only upon the complainants, but upon the shippers of other commodities.

The complaints further alleged "that the rates so fixed by said order are unreasonable and confiscatory in that while it is not possible to accurately compute the actual cost involved in transporting a car of lumber from the States of Washington, Oregon, Montana, and Idaho to eastern destinations, nevertheless it is possible with substantial accuracy to determine whether or not the transportation of lumber aforesaid may be conducted without loss under the rates so fixed by said order; and your orators, upon information and belief, aver that the rates so fixed by said order are not and will not be sufficient to pay the cost of conducting the transportation aforesaid and any just or fair return upon the value of the property used in said transportation, and said rates so fixed by said order aforesaid bear no fair or just relation to the rates on through traffic moving over your orators' lines of railway, and the enforcement of said order of the defendant will impose an undue and unreasonable burden, not only upon your orators, but upon the shippers of other commodities."

132 This is the only allegation of confiscation contained in the bills.

To these bills the commission filed a demurrer and answer, the demurrer applying to those allegations of the bill which set forth that

certain portions of the act to regulate commerce are unconstitutional, and by stipulation the questions raised by these demurrers are reserved for the court's decision, and with those questions the master has nothing to do.

In its answer the commission denies that the rates in effect and complained of before the commission were either unreasonable or unjust and will so continue to be. The answer sets forth the position of the commission with reference to the extent of the review which the court should exercise over the action of the commission, namely, that the court should not make any inquiry with reference to whether the rates prescribed by the commission are just and reasonable, except within the constitutional guaranty in the fifth amendment, which prohibits the taking of private property without just compensation and due process of law. The answer alleges that the rates prescribed by the commission will afford just compensation for the service rendered and that the orders were made in due process of law. It is further alleged that the court should not hear and determine these cases upon any state of facts which were within the knowledge of the complainants and which they failed or neglected to present to the commission at the time of the hearings, nor upon any facts which may have arisen since said hearings, except such facts be first presented by an application for rehearing or otherwise to the commission. It is further alleged that the mere allegation that the rates of transportation prescribed by the defendant will not afford a fair compensation or will entail a loss or will be unremunerative ought not to be
133 considered, because such allegations are statements of conclusions or opinions of interested parties and do not have coupled therewith any statements of facts from which the reasonableness of a rate can be determined. It is further alleged that the commission is vested with the exclusive power of determining what are just and reasonable rates to be charged on traffic subject to the act to regulate commerce as amended; that the reasonableness of such rates is not open to judicial inquiry leading to an independent conclusion except such as may be necessary to protect the constitutional rights of complainants. The answer denies that the defendant made the orders complained of without any evidence that the rates complained of were in violation of the act to regulate commerce; and avers on the contrary that the orders were made after a full inquiry and due investigation which disclosed facts compelling the orders made by the commission.

There seems to be a sharp controversy between complainants and defendants as to the scope of the inquiry to be entertained by a Federal court in reviewing an order of the Interstate Commerce Commission which fixes and prescribes rates for the future. The complainants claim as follows: "The questions involved in all three suits are, however, practically identical, being simply the question whether the rates as advanced were unreasonable and whether the rates the commission put into effect in place of them are reasonable."

It is apparent from the arguments in the briefs that the words "reasonable" and "unreasonable" are used by the complainants in the ordinary sense. The complainants argue that inasmuch as the interstate commerce act enjoins upon the commission the duty of prescribing a reasonable rate that any rate which they may prescribe which is not reasonable is unlawful and therefore without the scope of their authority, and that a Federal court may fully review the action
134 of the commission with reference to the reasonableness of a rate prescribed by them as an operating proposition above and beyond the mere question as to whether or not it violates the constitutional guaranties of just compensation.

The defendants insist that the court has no right to investigate the rate prescribed for the future by the Interstate Commerce Commission any further than to ascertain whether or not it violates the constitutional guaranties of just compensation and due process of law. The defendants claim that the only questions properly before the court are the following: (1) If this court finds that the order was regularly made, is not fraudulent or so arbitrary as to exceed the limits of regulation, should it make any other inquiry than as to whether the rates prescribed are confiscatory? (2) Under the circumstances disclosed in this case should this court consider the reproductive cost of complainants' property as a material fact in throwing light upon the subject matter of the inquiry? (3) Should evidence be considered by this court which has not been first presented to the Interstate Commerce Commission, there being no allegation that such additional evidence is newly discovered or could not have been presented to the commission? (4) Should any of defendant's objections to the admissibility of testimony be sustained? (5) Do the facts shown of record warrant a finding that the rates prescribed by the commission are confiscatory? (6) Are the orders of the commission in any respect unlawful?

These suits involve rates for the transportation of lumber and forest products from points on the Pacific coast to points on and east of the Missouri and Mississippi Rivers. The facts and circumstances leading up to this litigation and out which it grows are as follows:

To the west of the Cascade Mountains from the crest of the
135 range to the Pacific coast is a large, heavily timbered district known and dealt with in the record as the coast district, and the coast basis of rates applies to that territory. On the east side of the Cascade Mountains as far east as the city of Spokane, Washington, is another territory, which is not referred to or much dwelt on in the testimony and the rates from which do not seem to be involved in these cases. Spokane is the center of another lumber producing territory. In early years before this industry at Spokane became sufficiently developed to invade the eastern markets the old coast rates applied to Spokane and all territory west thereof, but later on, when the Spokane lumber industry outgrew their merely local markets, a differential rate slightly lower than the old blanket coast rate was installed for eastern shipments, so that Spokane forms the basis

of a lower differential rate on eastern shipments. Coming farther east and continuing up the slope of the Rock Mountains, we reach another district, which is the basis of a still lower differential rate on eastern shipments, known as the Montana-Oregon basis and typified on the Great Northern Road by Kalispell, Columbia Falls, and White Fish; on the Northern Pacific by Hamilton, St. Regis, and Missoula, Montana; and on the Union Pacific and Oregon Short Line Railroads by Boise, Idaho, and Baker City, Oregon.

As all the differential rates are of course controlled and regulated by the basic rate or the through rate east from the coast district, the discussion in these cases has been confined to the through rates. Prior to November 1, 1907, the following were the rates in effect from coast points to the larger destinations in the Middle West: Coast to St. Paul, 40 cents per one hundred pounds; coast to Omaha, 50 cents; coast to Chicago, 50 cents; coast to Denver, 40 cents; coast to St. Louis, 52½ cents.

136 These rates had been in effect for about 15 years and were first installed at the time the Great Northern Road completed its road to the coast. A higher rate had been in effect prior to that time, but the installation of a 40-cent rate from the coast to St. Paul by the Great Northern Road compelled a reduction in rates by the other lumber-carrying roads, and the foregoing rates had been in effect since the latter part of 1893 or the very early part of 1894. On the first day of November, 1907, the roads duly installed a new tariff of rates which advanced the rates on corresponding prices as follows: Coast to St. Paul, 50 cents; coast to Omaha, 55 cents; coast to Chicago, 60 cents; coast to Denver, 50 cents; coast to St. Louis, 60 cents.

Prior to November 1, 1907, the rates from the Spokane district were as follows: Spokane to St. Paul, 40 cents; Spokane to Omaha, 45 cents; Spokane to Chicago, 50 cents; Spokane to Denver, 40 cents; Spokane to St. Louis, 52½ cents. By the tariff installed November 1, 1907, these Spokane rates were advanced as follows: Spokane to St. Paul, 45 cents; Spokane to Omaha, 50 cents; Spokane to Chicago, 55 cents; Spokane to Denver, 45 cents; Spokane to St. Louis, 55 cents. Prior to November 1, 1907, rates in the third or Montana-Oregon district were as follows: To St. Paul, 40 cents; to Omaha, 40 cents; to Chicago, 50 cents; to Denver, 35 cents; to St. Louis, 49½ cents; and by the tariff installed November 1, 1907, these rates were raised as follows: To St. Paul, 43 cents; to Omaha, 43 cents; to Chicago, 53 cents; to Denver, 40 cents; to St. Louis, 52½ cents.

The conclusion of the commission was to practically restore the old rates with the exception that they permitted an advance of 5 cents

137 per one hundred pounds on the freight destined to points east of the Mississippi River. The commission drew a line which they called the Pembina–Port Arthur line. Pembina is a station on the international boundary on the Red River of the North near the western boundary of Minnesota. They drew a line through Pembina running approximately due south, following the State lines approximately until they arrived at Sioux City, Iowa, then following

the Missouri River down through Omaha and Kansas City, then the line of the Kansas City Southern Road to Port Arthur, Texas, and this line is known as the Pembina–Port Arthur line. West of that line they restored the rates as they had been previous to November 1, 1907, denying the application for an advance. East of that line they permitted an advance of 5 cents per one hundred pounds.

There is no testimony in this record directly applicable to the effect upon the earnings of the complainants of this new rate established by the commission on through traffic. While it was not as much as the complainants considered reasonable, still, on through traffic, it was a distinct advance to the northern lines, but no testimony has been offered showing how this rate actually affected the earnings of the complainants.

The testimony of the complainants has been mainly directed to showing that the old rates in force for 15 years prior to November 1, 1907, were unreasonably low and did not produce their fair share of returns or remuneration to the roads. Their testimony has been largely confined to a statement of the conditions prevailing in 1893, when the old rate was first installed, and to a statement of the changed conditions prevailing in 1907, on account of which they claimed the advance in rates was justified.

The complainants admit that it is not possible for them to show the actual cost of the transportation of a carload of lumber, the
138 actual value of that portion of their property which is devoted to the lumber traffic, what relation the net returns on lumber traffic bear to the entire body of the net returns.

They have offered testimony substantially showing that in 1893, at the time of the installation of the old rates, the lumber industry upon the coast was in its infancy and unable to compete in the Middle West with the white pine of northern Michigan, Wisconsin, and Minnesota. It is demonstrated that in 1893 the white pine of northern Michigan, Wisconsin, and Minnesota controlled the entire northern Middle West market as far south as St. Louis. This was on account of the cheap rates of water transportation afforded by the Great Lakes and the Mississippi River. In 1893 the railroads had a large eastbound empty-car movement. There were no products on the coast sufficient to load for the eastern markets the cars required to carry to the coast all westbound traffic.

For the purpose of providing loads for the eastbound empty cars, and in that way getting back some proportion of the expense of hauling these cars east, the railroads installed the old 40-cent rate to St. Paul.

In 1893 the prices of labor and materials and all things which went into the equipment of railroads in the handling of traffic, as well as the price of lumber, were very low.

In the period intervening between that time and November 1, 1907, the situation has been reversed. The white pine of northern Michigan, Wisconsin, and Minnesota has practically disappeared from the market and is no longer an important element of competition.

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The Oregon and Washington lumber has practically acquired the old white pine market. The lumber industry in the coast district has grown to enormous proportions and become an exceedingly prosperous industry. Prices of labor and materials have also increased to a very large extent and the empty-car movement which in 1893
139 was from the west east is now from the east west, or a westbound empty-car movement now prevails. To what extent this is due to the large output of coast lumber has not been clearly shown. It appears to be partly due to other species of traffic, but to a large extent it is no doubt brought about by the very great increase in the shipments of lumber east.

On the other hand it as clearly appears that the price of stumpage, prices of labor, price of machinery, and all other elements entering into the lumber traffic have increased in proportion, as have the prices of those things which enter into the transportation increased.

It further clearly appears that during all these years these railroads have been prosperous. They have paid all the interest on their bonds and outstanding indebtedness, paid dividends upon their stock, spent vast sums of money in extensions, reproducing equipment and improvements and in addition thereto have accumulated large surplus funds.

Two of the complainants in this action, the Great Northern road and the Northern Pacific road, have offered before the master a large volume of testimony consisting of an estimate made by their engineers and heads of departments as to what it would cost to reproduce their railroads. This estimate contemplates in the case of the Northern Pacific a period of 12 years for the reproduction of the road, and in the case of the Great Northern a period of 8 years. In making the estimate it is not contemplated that any net returns for traffic or business done during the period of construction shall be had. In the case of the Northern Pacific the estimate approximates $700,000,000.00, and in the case of the Great Northern, $550,000,000.00.

It must be borne in mind that this cost of reproduction is not
140 an ultimate fact to be considered in the solution of these cases, but merely a collateral fact offered to influence the court's conclusion upon the ultimate fact as to the real value of the properties.

The evidence consists, as before stated, merely of estimates made by experts in the employ of the complainants. In the opinion of the master it is so remote and speculative as bearing upon a particular rate as to be immaterial and it would serve no useful purpose to attempt to make a finding as to what it would cost under the circumstances and conditions indicated in the estimate to reproduce the roads in question. The master's opinion would be merely a guess and no better than the guess of the court, and inasmuch as it is conceded and admitted by the complainants that the real and true value of the roads are never considered in the making of rates and have nothing to do with them, we think this evidence so remote and speculative as to be absolutely immaterial in this case.

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FINDING OF FACTS.

Upon careful consideration of all the evidence in this case I find the following ultimate facts, which, in my judgment, is a fair analysis of the evidence and illustrates the situation in reference to the rates in question.

I.

In 1889 a 40-cent rate per one hundred pounds was installed by the Union Pacific system from Portland, Oregon, to Denver, Pueblo, and other Colorado common points. In 1893 a 45-cent rate was installed by this system from Portland to Council Bluffs and Omaha and other Nebraska main-line points. Concurrently with this rate a rate of 50 cents was made to Chicago and 52½ cents was made to St. Louis.

In 1901 the 45-cent rate to Omaha and Council Bluffs was
141 raised to 50 cents and extended or blanketed to include Sioux City, Kansas City, and other points west thereof. The 50-cent rate to Chicago was also maintained.

II.

In 1893 the Great Northern road was completed to the coast, and in the latter part of that year or the early part of 1894 installed the superseded rates here in controversy, which were met by the Northern Pacific system and were as follows: To St. Paul, 40 cents per one hundred pounds; to Chicago, 50 cents; to the Mississippi River, 50 cents; to St. Louis, 52½ cents; to Denver, 40 cents; to Missouri River points, 50 cents.

The Union Pacific system never met the 40-cent rate to St. Paul by any of its Missouri River crossing rates. Its 50-cent rate to Omaha continued concurrently with the 40-cent rate to St. Paul from 1901 to November 1, 1907. But because of the 50-cent rate to Chicago from St. Paul, via the northern lines, it was obliged to blanket or extend its Omaha rate of 50 cents to Chicago.

III.

At and prior to 1893 the lumber manufacturing industry in Washington and Oregon was in its early infancy. Except for purely local consumption the mills disposed of their products at points reached by water transportation. The volume of business continued to be inconsiderable for several years after the Great Northern road reached the coast.

IV.

The superseded rates were made voluntarily by the carriers in 1893 avowedly for the purpose of stimulating the lumber industry

in the coast territory and thereby producing a traffic for the
142 roads and more particularly and immediately for utilizing an east-bound empty car movement then prevailing. At that time the balance of trade was against the coast territory and there was a well defined east-bound empty car movement from the coast.

V.

In 1893, at the time the superseded rates were installed, the entire country was suffering from the effects of the financial panic of 1893; "hard times" prevailed and industries of all kinds were at a low ebb.

VI.

In 1893 the lumber market of the northern Middle West, from as far south as St. Louis, was controlled and dominated by the white pine of Michigan, Wisconsin, and Minnesota, and continued to be so controlled for some years thereafter. The cheap water transportation afforded by the Great Lakes and the Mississippi River enabled the white pine to control this market until the supply became inadequate to the demand and, in fact, exhausted. Thereafter this market became to a certain extent a battle ground between the Washington and Oregon lumber and the western pine from the Spokane district on the one hand and the southern pine on the other; but the unexampled revival of industry and increase in general business prosperity enjoyed by this middle district since 1897 has created such an enormous demand for lumber and forest products that this competition between western and coast lumber and southern lumber seems to have had but little effect in keeping down the price of lumber.

VII.

The superseded rates of 1893 were voluntarily continued in force by the carriers until November 1, 1907, and during that period,
143 especially during the last few *few* years thereof, under this rate the lumber industry of this coast territory increased enormously. Many mills were built in the interior, where they were solely dependent upon rail transportation. Except a limited number of mills situated at points like Portland, Oregon, the great majority of the mills engaged in this industry are wholly dependent on the railroads for an outlet to markets. As the industry has grown it has prospered and been profitable ever since the 40-cent rate went into effect. At the time of the hearing of these cases before the commission the amount invested in the lumber business in Oregon was approximately $60,000,000.00, exclusive of mills, logs, standing timber, and timber land. Approximately 40,000 persons were directly engaged in the industry. The annual pay rolls exceeded $20,000,000.00 and the annual output of lumber exceeded 2,000,000,000 feet. There is no sufficient data in the record from which to accurately

state the number of lumber-producing plants in all this coast territory, the amount of the investment therein, or the number of men employed therein, but it clearly appears that there are many hundred mills, in which are invested many millions of dollars and in which many thousands of men are employed, that the annual output has been constantly and rapidly increasing in recent years, and that the industry is the most important one of that region.

Part of the product of the mills of this coast territory are practically subject to no competition because of the superior nature of the lumber. On long timber there is little or no competition from other producing points. A certain portion of the lumber manufactured on the north Pacific coast can compete successfully with other lumber in any market. They there produce certain dimensions and qualities that are produced to but a limited extent for delivery elsewhere. These qualities are the choice portions of the logs. Necessarily
144 in producing them a large quantity of common lumber is also produced. The greater part of this common lumber finds its market locally or in the near-by States and in Colorado, Nebraska, and North and South Dakota. Comparatively little of this common lumber reaches the Missouri and Mississippi River territory. From 30 to 50 per cent of the finished output of the Oregon mills reaches the territory affected by the increase in rates.

The combined north Pacific Coast States market about 5 billion feet annually as against approximately 19 billion feet of southern and white pine, showing that the southern and white pine predominate and fix the price in competitive markets.

During the summer of 1907 it became known and understood among the lumber trade that the then existing rates were to be increased. The industry immediately began to feel in some degree the effects of this unsettled rate situation. Purchasers at destination points began to postpone the placing of orders and to cancel orders already placed. The reasons given were that on account of the increase in rates lumber would be cheaper in the near future. One salesman testified that on a trip where he would ordinarily take orders for from 300 to 500 cars of lumber he was unable to get a single order because he would not guarantee the old rates. Dealers and purchasing agents of railroads refused to buy on the ground that after the advanced rates became effective there would be a falling off in the price of lumber caused by the surplus that would exist in producing territory which could not reach its former competitive markets under the advanced rates.

At and for some months prior to the hearing of these cases before the commission the lumber industry in this coast territory was greatly depressed and a large percentage of the mills had been shut down and were not in operation.

145 At the same time there also existed a financial depression, sometimes designated as the panic of 1907, which must also be considered in arriving at the causes of the depression then existing in the lumber business.

At the time the superseded rates were installed stumpage in the coast district was very low, some purchases being made at 25 cents per thousand feet. This low price continued for some time after that date and comparatively few mills took advantage thereof. As the area of the white pine in Wisconsin, Michigan, and Minnesota decreased the value of Pacific coast stumpage increased, as did also the value of the yellow pine stumpage of the Southern States. The increase in the price of Pacific coast stumpage has been gradual and steady since 1893. The greatest increase has occurred since 1902 and the largest part of that increase has taken place since 1905. Prior to the advance in rates in November, 1907, prices in Oregon ranged from $1.50 to $2.50 per thousand feet and along the Columbia River it was as high as $3.00. The majority of the millmen own their stumpage, but the majority of the stumpage is not owned by the millmen. Many large tracts are held by individuals and corporations that are not engaged in the manufacture of lumber. The price of logging has gradually increased until at the time of the hearing of these cases before the commission it cost between $5.00 and $6.00 per thousand feet to get logs to the mill. In some parts of Oregon it was even higher. The price of logs in the open market has likewise increased since 1893 from $2.50 to $3.00 per thousand feet in the year 1893 up to $6.00 in 1900. This price continued until 1902, then with various increases and fluctuations to 1904 and 1905. In 1905 the price reached $9.00 per thousand feet. Following the Valparaiso and San Francisco disasters the price increased during 1906 and 1907 to $13.50 per
146 thousand feet. After the announcement was made that the lumber rates were to be advanced the price of logs fell off $1.00 per thousand feet in the month of July, 1907, in August, 1907, the price feel off $1.50 per thousand feet with a corresponding fall in the month of September. And the total decrease from August to December was $4.00 per thousand feet. At the time of the hearing of these cases before the commission fir logs were sold for $9.00 per thousand feet in Portland, which price included a 50-cent towage charge.

The cost of manufacturing lumber has kept pace with the increased cost attendant upon all other industrial pursuits. From 1904 to 1907 the advance has been between 35 and 40 per cent in both labor and material. The increase in labor exceeds the increase in material, but the two make an average of about 40 per cent.

During the year 1906 the millman's average profit per thousand feet upon all classes of lumber produced by them ranged from $1.60 to $2.80. A lower profit was made by mills that bought logs in the open market or those operating where logging was more expensive. The higher profit was made by mills that owned their own stumpage, for which they charged themselves from $1.00 to $1.50 per thousand feet. Some of the mills that made a profit of $2.80 per thousand feet in 1906 made a profit of 26 to 50 cents per thousand feet in 1905. The unusual general prosperity of the year 1906, coupled with the extraordinary demand for lumber caused by the Valparaiso and San

Francisco disasters, undoubtedly account to a considerable extent for the sharp increase in profits in the year 1906.

In the year 1890 there was a decided predominance in the empty car movement east bound amounting at that time to about 161.17 per cent over the west-bound empty car movement on the Northern
147 Pacific Railway. In 1891 the predominance of east-bound empty car movement over west-bound had decreased to 72.17 per cent, and in 1892 it had further decreased to 4.35 per cent. In 1893 and all subsequent years down to 1907 conditions have been reversed, and during this entire period there has been a large predominance of west-bound empty car movement over the east-bound on the Northern Pacific Road. Approximately the same condition prevailed during the year referred to upon the Great Northern Road. In 1893, when the Great Northern was completed to the coast, the west-bound loaded freight car mileage on the main line between Havre, Montana, and Seattle, Washington, was 3,688,568, as against 2,366,546 east-bound. At the same time the west-bound empty car mileage was 607,088, as against 1,922,262 east-bound. In 1897 the west-bound loaded mileage was 7,104,181, as against 10,050,979 east-bound, whereas the empty west-bound mileage was 3,527,377, as against only 576,071 east bound empty mileage. In 1906 the west-bound loaded mileage was 22,939,649, as against 32,323,906 east-bound loaded mileage, whereas the west-bound empty mileage had increased to 11,860,201, as against 1,806,850 east-bound empty mileage.

Ever since 1903 the condition in respect to the predominance of empty car mileage has been changing until in 1907 the west-bound empty car movement greatly predominated over the east-bound empty car movement. This result was not wholly due to the increase in the lumber traffic, but in part to the very great increase in the volume of other important commodities shipped from the West to the consuming markets of the East. The establishment of manufacturers of finished products in the West has to a certain extent diminished the volume of manufactured products moving from the East to the West. In 1890 upon the Northern Pacific the predomination of west-bound loaded car mileage over east-bound loaded
148 car mileage amounted to 57.23 per cent, while in 1906 the predomination of east-bound loaded car mileage over west-bound loaded car mileage amount to 43.40 per cent, and in 1907 to 3.2 per cent. This sharp and sudden decrease in the percentage of east-bound loaded car mileage over west-bound loaded car mileage in the year ended June 1, 1907, was, however, not normal, but due to temporary and unusual causes, viz, the construction of the Chicago, Milwaukee & St. Paul coast extension and the Seattle and Portland line, most of the supplies for which were taken out over the northern lines, and also to the unprecedented storms, snowfall, and excessive cold weather prevailing in the winter of 1906 and 1907, which resulted in a practical suspension of business on the through lines for three months.

The empty car movement westward predominates to a greater extent on the Great Northern and other lines on which the products of mines constitute a greater proportion of the traffic handled than forest products, than on the Northern Pacific line, which hauls a much larger percentage of forest products than do the other carriers. For the year ending June 30, 1907, the percentage of tonnage constituting all products of mines out of the total number of tons carried on the Great Northern Railway was 51.75 per cent, and all forest products 14.50 per cent. On the Northern Pacific the percentage of mine products out the total tonnage was 21.05 per cent, and of the forest products 37.38 per cent. A similar situation is shown to have existed on the Union Pacific system during the same period.

During all the period involved in this discussion, viz, from 1893 to November 1, 1907, the cost of operation of the complainants' roads has constantly increased. This increase is fairly illustrated by
149 the testimony of the witness R. I. Farrington relating to the cost of operation of the Great Northern road. He testifies: "Taking the year 1895 as one hundred per cent, the cost per freight train mile for the calendar year 1900 was 143.82 per cent of 1895; for the eleven months ended November 30, 1907, the cost per freight train mile was 207.7 of 1895. Of course, in 1907 it is more than twice what it was in 1895 per freight train mile. Per freight car mile, using 1895 as one hundred per cent, the cost in 1900 was 126.19 per cent, and the cost in 1907 was 162.77 per cent. Consequently, it cost nearly 63 per cent more to haul a freight car one mile in 1907 than it did in 1895."

Concurrently with this increase there has been a persistent and well directed effort on the part of all the carriers to wisely economize in the matter of cost of operation, and such results have been achieved as to preclude the idea that the increase in the cost of operation is due to any failure in wise and economic operation. The testimony clearly indicates that all these roads are wisely and economically handled, at least so far as cost of operation is concerned.

Since 1897 the lumber industry of this coast and Spokane territory has developed and increased so rapidly that it has constantly outrun the capacity of the roads to handle it, and these roads have been compelled ever since 1897 to spend vast sums in improvements, extensions, and for more powerful equipment in order to keep pace with the ever increasing east-bound traffic from those points. Other species of east-bound traffic have also increased, but the greatest increase is shown to be in the lumber traffic.

During all this period, and particularly since 1897, these roads have earned satisfactory incomes. They have paid all interest on their bonds and indebtedness, all operating expenses, fairly
150 satisfactory dividends on their stock, vast sums in improvements and extensions, and have accumulated handsome surplusses, and clearly appear to have been on the whole prosperous, and to have earned fairly satisfactory net incomes from their transportation.

By the orders here under discussion the commission restored the rates in force immediately prior to November 1, 1907, as far east as the so-called Pembina–Port Arthur line and to the territory east thereof, permitted an advance of 5 cents per one hundred pounds, which operated to fix a rate of 45 cents per one hundred pounds over the northern lines to St. Paul, Minneapolis, and Duluth. By this order a rate of 50 cents per one hundred pounds over the Union Pacific system to Omaha and Missouri River points on said Pembina–Port Arthur line was established. The short line distance over this system from Portland to Omaha is 1,799 miles, and to Kansas City and other Missouri River points is 2,030 miles. From the evidence and exhibits offered it fairly appears that this 50-cent rate over this system will result in a revenue of 5.56 mills per ton mile to Omaha and 4.92 mills per ton mile to Kansas City, and that such revenue is far below the average revenue per ton mile on any of the complainant roads, and that this 50-cent rate over this system to Omaha is a very low rate. The distance from Tacoma, Washington, to Minneapolis, via the Northern Pacific lines, is substantially 1,896 miles; from Portland to St. Paul, 2,052 miles, and from Astoria to St. Paul 2,072 miles. Omaha and St. Paul are on a parity as bases of through rates, and are so considered by the commission and by rate experts. (See commission's decision in Spokane v. Northern Pacific Ry. Co., decided June 7, 1910, 19 I. C. C. 162.) By the orders here under discussion the commission prescribed a rate of 45 cents per one hundred pounds over the northern lines to St. Paul, Minneapolis, and
151 Duluth. This rate will undoubtedly result in a revenue to the northern lines measurably less than the revenue yielded to the Union Pacific line by the 50-cent rate to Omaha. Under the old 40-cent rate to St. Paul the revenue per ton miles accruing to the northern lines was 3.90 mills, and under the 50-cent rate installed November 1, 1907, would have been 4.87 mills from Portland to St. Paul. From Tacoma to Minneapolis under the 40-cent rate it was 3.98 mills per ton mile, and under the November 1, 1907, 50-cent rate it would have been 5.27 mills.

Evidence was offered by the Great Northern Railway Company and the Northern Pacific Railway Company for the purpose of proving the value of the systems of railroads owned and operated by each of said companies, respectively. This evidence consisted primarily of schedules of all items of physical property, based upon the present cost of reproduction. These schedules were prepared in great detail, and the evidence indicates that they are the result of extended examination of records of these companies, inspection of the properties, and consideration by competent experts of the various questions involved in an appraisal of this kind. These schedules were examined and checked by the defendant during a period of about six months pending the hearing of these cases. The record of the companies were open to the force employed by the defendant for that purpose, under the direction of an engineer selected by it, and while it is probable that in view of the large volume of records bearing upon the cost

of construction of various items of the property, the defendant was not able to fully examine all the records in that regard, it appears that they were thrown open to it and opportunity offered for as full and complete examination of them as it elected to make. At the conclusion of this examination the engineer selected by the defend-
152 ant appeared before the master and evidence produced by him is in the record. It is sufficient to say that while there are differences between his conclusions and those reached by the witnesses produced by these companies on this subject, those differences appear to be minor in their character and relation to the whole subject. The basis adopted by these companies for the preparation of these schedules is approved and supported by the engineer employed by the defendant. So far as the examination by the defendant's engineer went, it is apparent that the results reached are not widely apart from those reached by the engineers of the railroad companies.

Evidence was also offered by the two companies in question of the values of their properties based upon computations from market prices of stocks and bonds for fairly representative periods. This method of ascertaining the value of railroad property seems to have the support of a number of decided cases, and is of value in the consideration of questions of this character.

The record contains evidence of the amount of outstanding stocks and bonds of these two companies, together with a full showing for recent years of current results of operation. There are in evidence exhibits showing gross revenues, operating expenses, taxes, net revenues, amounts of interest paid upon obligations, dividends paid, amounts appropriated from income for various purposes, and in fact all of the essential statistics necessary to a clear understanding of the results of the business of these two companies during the period covered by the figures.

Of the methods made use of in these cases for the purpose of indicating the approximate value of these properties, it is perhaps sufficient to say that each method seems supported by ample judicial authority and to be of value in the consideration of the complex questions involved.

153 In the determination of the issues presented by these cases, involving as they do rates upon a single item of traffic, the value of the total properties of these companies is of only indirect bearing. The defendant commission appears to have reached this conclusion and to be of that opinion because in a case of like character involving rates on lumber from southern and southeastern points of production to the Ohio River and north thereof it held to that effect. (Central Yellow Pine Association v. Illinois Central Railroad Company, 10 I. C. C. 529.)

The master does not understand that these companies offer this evidence upon the theory that it will directly aid in the determination of the issues here involved. They do offer it for the purpose, as stated, of demonstrating that the return during recent years upon the fair value of these properties has not been and is not excessive; they

argue that if the rates upon lumber and other forest products embraced within their tariffs filed November 1, 1907, are neither unjust nor unreasonable, the results of the operation of these companies justify the effort thus made to increase revenues to meet increased cost of operation.

In the conclusion at which the master has arrived it seems unnecessary to consider this argument further than to say that from the evidence it is reasonably plain that the value of the property of these companies devoted to the public service is substantially above the amount represented by the par value of their outstanding stocks and bonds.

The evidence clearly shows that these lines of railroad are well located and maintained; that they are efficiently operated and occupy a portion of the country from which it is reasonably plain that under normal conditions they may expect a constantly growing volume
154 of traffic; they seem to have, from the vitality of their own organizations, as well as that of the industries tributary to them, the cities, towns, and general character of the country through which they operate, all of the valuable elements ordinarily comprehended within the term "going concern," and from the fact that they have been established and in operation for many years and during recent years at least with fair results, they each have the advantage which flows from long and favorable relations with the shipping public over and above a new road or roads constructed or operated through the same territory. These considerations in every line of business indicate important elements of value over and above mere cost of construction, and justify the conclusion which is fortified by ample authority that there exist in these properties large elements of value of this character.

The defendant in these cases has directed attention to the annual reports of these companies and other forms of statistical information tending to prove favorable results from operation, and it is sufficient to say in considering the arguments thus advanced that they are largely supported by the statistics referred to, and lead to the necessary conclusion that the properties contain elements of value in large measure as a direct result of the successful operation referred to.

It may properly be said, however, in considering the arguments offered by the defendant that these companies have been able to pay interest and dividends at a fair rate and accumulate surplus funds which have been appropriated from income and reinvested in the property, that such conditions are necessary, within proper limits, in order to enable companies of this kind to meet the tremendous increases in cost of operation incurred in recent years and the growing demands upon them for increased facilities to accommodate the growing commerce of the country through which they pass. Upon
155 the whole record I find no evidence that tends to indicate that during the period covered by the evidence in this case the results from operation of either of these companies were in any degree excessive.

On the contrary, upon a more critical consideration of the question of the true value of these properties in the light of the rule laid down by the Supreme Court of the United States in Smyth v. Ames, 169 U. S. 522, and subsequent decisions, if that were necessary or immediately germane to the issues here presented, it is probable that the net returns in recent years have been below rather than above the measure of a fair return upon the reasonable value of the properties used in the public service as defined in those decisions.

CONCLUSIONS OF LAW.

Upon consideration, the master has adopted the following conclusions of law which, in his judgment, govern and control the decision of these cases:

(1) A just and reasonable rate within the meaning of the interstate commerce act is a rate which (a) furnishes to the carrier just compensation for the services rendered and fairly, reasonably, and justly recognizes and considers his common rights and interests in the traffic under consideration; (b) which fairly, reasonably, and justly recognizes and considers the interest of the public in such traffic; (c) which fairly, reasonably, and justly recognizes and considers the interests of the shippers in such traffic, and (d) which on its face does not manifest or evince any arbitrary violation, perversion, or disregard of the spirit or intent of the interstate commerce law, but appears to have been made or promulgated fairly, justly, and reasonably in accordance which the fundamental principles of the law.

156 (2) The Constitution guarantees just compensation for private property devoted to a public use and under this guaranty a carrier is entitled to charge rates which are justly compensatory for the services rendered. But inasmuch as it is his entire property which is devoted to the public use he is only entitled to just compensation for the entire use, and a particular rate need not in and of itself furnish just compensation for the particular service rendered, so long as it does not so affect the general body of net returns as to reduce them below what is just and reasonable.

(3) Unless it appears that a single rate so affects the general body of net returns as to reduce them (the net returns) below what is just and reasonable, confiscation can not be predicated upon it.

(4) In determining the justness and reasonableness of the net returns to a railroad a principal consideration is the value of the property devoted to the public use; and in determining this value the reproductive value, or a just estimate of what it would presently cost to reproduce the properties as they presently stand, is of considerable material aid.

(5) But where the question under consideration is the justness and reasonableness of a single rate on a single commodity, because it is impossible to determine the value of that portion of the properties involved in and devoted to the traffic in a particular commodity, the

value of the properties as a whole bears so remotely on the proposition as to be immaterial and irrelevant.

(6) And the reproductive value being only a collateral fact offered to influence the court's conclusion as to the ultimate fact of real value is too remote and speculative to be material or relevant to the question of the justness and reasonableness of a single rate.

157 (7) The Interstate Commerce Commission is an administrative tribunal and the wisdom and expediency of the lawful exercise of the discretion delegated to it under the Constitution and the statutes is not reviewable by the courts.

(8) It is, however, limited in the exercise of its authority, first, by constitutional limitations, second, by specific limitations contained in its organic act, and third, by the spirit and intent of its organic act and the fundamental principles underlying its organic act.

(9) An administrative tribunal is not as free to act within the scope of its limitations as is a legislative tribunal, because in addition to its constitutional and statutory limitations it is further limited by the spirit, intent, and purpose of its organic act and the fundamental principles underlying it and because of which it was enacted.

(10) Federal courts of equity have the power and are charged with the duty to relieve from orders of the Interstate Commerce Commission which deprive complainants of their property without due process of law or take it without just compensation, from orders which are beyond the delegated power of the commission, and also from orders which evidence so unreasonable and arbitrary an exercise of its power and which are so inherently inconsistent with and violative of the spirit and intent of the interstate commerce act as to be substantially without, though formally within, their delegated authority.

(11) An order which on its face is inherently inconsistent with the fundamental principles of rational justice and palpably violates and perverts the spirit and intent of the interstate commerce act,

158 though in form within the limits of delegated power is in fact beyond those limits, and is an unlawful order, and one which results in taking of property without due process of law.

(12) On pages 39, 40, and 41 of volume one of the record appears certain objections entered by the defendant to the admission of evidence in these cases. Objection number one subdivided into sections A and B object to any testimony which does not show that the rate fixed by the Interstate Commerce Commission is confiscatory of the property of the carriers within the meaning of the fifth amendment to the Constitution of the United States and to any testimony which tends to show that such rate is otherwise (aside from the question of confiscation) unreasonable.

This objection is overruled for the reason that while a rate may not be confiscatory it may yet be so unjustly discriminatory and unduly preferential and may so arbitrarily violate the fundamental principles of rational justice and the spirit and intent of the interstate commerce act as to amount to the taking of property without due

process of law; and any evidence which tends to show such a situation is admissible and can be considered by the court.

Objection number two is based upon the claim that the allegations of the bills are not broad enough to amount to an allegation of confiscation.

This objection is overruled. The bills allege that the rates fixed by the commission are so unremunerative and so far below what is just and reasonable as to be confiscatory. I think the allegations are broad enough to admit of proof of confiscation. The Constitution provides that no property shall be taken for public use without just compensation. The interstate commerce act provides that all rates shall be just and reasonable. The language of these two pro-
159 visions means the same thing, and by these two provisions of law a point is fixed below which a carrier can not be compelled to go and above which it may not lawfully go. Anything less than that which is just and reasonable will necessarily amount to confiscation and therefore when a rate is attacked on the ground that it is less than that which is just and reasonable it is in effect an allegation of confiscation and permits the courts to inquire into the rate to the extent of ascertaining whether or not it is so low as to be less than just and reasonable.

Objection number three is based on the claim that no new and additional evidence is admissible for any purpose unless the complainants have first presented or offered to present the same to the commission for its consideration, or in effect taken such proceedings as amount to an application for a new trial.

This objection is overruled upon the authority of the court of appeals for the eighth circuit in Missouri, Kansas & Texas R. R. Co. v. Interstate Commerce Commission, 164 Fed. 645, wherein it is held: "It is not intended that the hearing in such a suit, whether it be of the one kind or the other, shall be confined to an ascertainment of what was determined by the commission and to a consideration of the sufficiency of the facts as determined by it to sustain the order; but on the contrary the hearing may be de novo, and may include the taking and consideration of evidence other than that before the commission."

Objections 4, 5, and 6 are elaborations of the principles sought to be enforced in objection number three.

Objection number four proceeds upon the principle that no new or additional evidence is admissible unless it is what is known in law as newly discovered evidence; that is, evidence unknown to the complainants at the time of the hearing before the commission.

160 Objections numbers 5 and 6 proceed upon the principle that no such newly discovered evidence can be offered unless it has previously been offered to the commission for its consideration and the commission has failed or refused to hear it.

The point of these objections is that it is unfair for a carrier to fail to take advantage of the opportunity offered under the law by the commission for a full hearing and thereafter apply to the courts to

protect it against orders which might never have been entered had the carriers so taken advantage of their opportunity for a full hearing.

In such a case a carrier would be without any standing in a court of equity, for he would not be coming into a court of equity with clean hands. But where it appears that a carrier honestly and in good faith has presented his case to the commission on a complaint, and in good faith presented to the commission for its consideration all the evidence then in its possession, it ought not to be, and is not, precluded from presenting to the courts in a suit for an injunction any other evidence relative and material to the suit of which it may avail itself. The objection seems to proceed upon the theory that a hearing before the commission is like a suit at law, and that the commission's decision is dependent upon the record, and that to disturb the decision by other evidence can only be done by the presenting of newly discovered evidence not within the knowledge and possession of the carriers at the time of the trial, and that the decision can only be disturbed on this ground by a proceeding before the commission analagous to a motion in a suit at law for a new trial upon the ground of newly discovered evidence.

This theory is quite at variance with the defendant's other theories and claims as to the powers of the commission. The commis-
161 sion is not confined in its decision to the consideration of the particular evidence submitted to it in any hearing, but is supposed to possess all knowledge and wisdom pertaining to the matters under consideration, and is at liberty to use all knowledge it may possess or obtain by any means both within and without the record. And the evidence actually submitted to the commission in any case is as a rule but a small part of the knowledge upon which the commission bases its decision. We think the court ought not to decline to hear a complainant on the ground that he has not first presented all his case to the commission, unless it appears that his failure in this respect amounted to a fraud on the commission and was a deliberate neglect to avail himself of the opportunities offered by the commission for a full hearing. Nothing of the kind appears in this case, and the objections to the new and additional evidence are overruled.

DISCUSSION.

"Section 1 of the act to regulate commerce" provides, among other things, "all charges made for any service rendered in the transportation of passengers and property * * * or in connection therewith, shall be just and reasonable; and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful."

This section further imposes upon common carriers the duty to furnish transportation at "just and reasonable rates applicable thereto."

Section 2 defines, prohibits, and declares unlawful any unjust discrimination between persons by means of special rates, rebates, drawbacks, or other devices, and section 3 declares it to be unlawful for

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any common carrier to make or give any undue or unreasonable preference or advantage to any particular person, company, firm,
162 corporation, or locality, or any particular description of traffic in any respect whatever, or to subject such persons, entities, localities, or particular descriptions of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Section 15 provides that the commission is authorized and empowered and it shall be its duty whenever, after a full hearing upon a complaint made as provided in section 13 of the act, or upon complaint of any common carrier, it shall be of the opinion that any of the rates or charges whatsoever demanded, charged, or collected by any common carrier or carriers subject to the provisions of this act for the transportation of persons or property as defined in the first section of this act, or that any regulations or practices whatsoever of such carrier or carriers affecting such rates, are unjust or unreasonable, or unjustly discriminatory, or unduly preferential or discriminatory, or otherwise in violation of any of the provisions of this act, to determine and prescribe what will be the just and reasonable rate or rates, charge or charges, to be thereafter observed in such case as the maximum to be charged; and what practice or regulation in respect to such transportation is just, fair, and reasonable to be thereafter followed; and to make an order that such carrier shall cease and desist from such violation to the extent to which the commission find the same to exist and shall not thereafter publish, demand, or collect any rate or charge for such transportation in excess of the maximum rates or charges so prescribed, and shall conform to the regulations or practice so prescribed. An analysis of this power and authority resolves it into three divisions. The commission has power to interfere (a) when rates are unjust and unreasonable, (b) when the rates and also the practices and conduct of the busi-
163 ness are unjustly discriminatory or unduly preferential, and (c) when specific requirements of the statute are violated.

And the remedies which they are authorized to determine and prescribe for the future are: (a) Just and reasonable rates, (b) just, fair, and reasonable regulations and practices, and (c) orders compelling the abandonment of illegal practices consisting in violations of specific requirements of the statute.

A principal question in these cases is as to the extent of the powers thus conferred on the Interstate Commerce Commission and particularly as to the extent of the powers stated in subdivision (a).

While the bills allege that the rates fixed by the commission are so low, unjust, and unreasonable as to result in an undue preference of the lumber traffic over other descriptions of traffic and discrimination in its favor against other species of traffic, still they nowhere point out any particular class or species of traffic which is discriminated against, and nowhere point out where, to what extent, or in what manner such discrimination is had, nor state any facts upon which discrimination and undue preference can be predicated.

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The substance of those allegations of the bills with which the master is concerned is that the rates fixed by the commission are so low and unremunerative as to be unjust and unreasonable, and therefore the commission exceeded their power in prescribing them, and are taking the carriers' property without due process of law, and, further, that because the rates are unjust and unreasonable and less than what is just and reasonable they are confiscatory and in violation of the constitutional guaranty of just compensation.

It will be seen, therefore, that the cases turn almost entirely upon the extent of the power conferred upon the commission to fix rates
164 for the future. The defendant claims that in the matter of fixing rates for the future under the circumstances and within the statutory requirements conferring jurisdiction to inquire (such as complaint, notice, full hearing, etc.) their power is as full, plenary, and absolute as is the power of Congress itself; that its reasons, motives, and discretionary powers may be as broad and plenary as those of Congress; and that its conclusions can only be attacked on constitutional grounds as a confiscation.

The complainants, on the other hand, claim that this power is a limited power, limited not only by the constitutional guarantees of just compensation and due process of law, but limited also by the terms and language of the statute itself, and that if it can be shown that any rate fixed by the commission is not just and reasonable, but is unjust and unreasonable in and of itself, it is an unlawful rate and beyond the power of the commission to prescribe or enforce.

The solution of this proposition depends entirely upon the interpretation to be put upon the words just and reasonable. If the interpretation of these words is to be based upon their widest sense, and upon all the reasons and considerations which Congress might entertain in the enactment of a statute including all grounds of public policy and all those considerations upon which rest the exercise of police power, then the position of the defendant is correct.

If, on the other hand, they are to be interpreted in a common and limited sense, and in a business sense, as applied to the business transactions between shippers and carriers, then this contention of the defendants is not correct, and the court may determine whether or not these rates are in truth and in fact in and of themselves just and reasonable and therefore lawful, or unjust and unreasonable and therefore unlawful, and in the latter event enjoin their
165 enforcement as an unlawful and unwarranted exercise of power which amounts to the taking of property without due process of law.

What, then, is a just and reasonable rate within the meaning of the interstate commerce act?

In the first place the Constitution supplies an absolutely essential and necessary ingredient or characteristic. It guarantees just compensation for private property taken for a public use, and any rate which violates this guaranty is a void rate. In Missouri, Kansas & Texas R. Co. v. Interstate Commerce Commission, a case from

the Eighth Circuit in 164 Fed., 645, the court said: "Its (the commission) determination or action does not and can not preclude judicial inquiry into the justness and reasonableness of the rates within the meaning of the constitutional guaranty, for that is a judicial question." "Neither Congress nor any legislative or administrative body acting by its authorization can competently establish rates for the transportation of property in interstate commerce that will not admit of the carrier earning such compensation for the service rendered as under all circumstances is just and reasonable, since such action would deprive it of its property without due process of law and would be a taking of its property for public use without just compensation in violation of the fifth amendment to the Constitution." Just compensation means the fair and reasonable value of the property taken. In condemnation proceedings it means the fair and reasonable value of the property for the highest use to which it can fairly and reasonably be put.

Applied to transportation rates, it must mean the fair and reasonable value of the particular service rendered, provided such services are rendered under normal circumstances. It is frequently said that regard must also be had to the rights of the public and to the interests of the shippers. In my judgment this means that a rate
166 may not be so high as to prevent the free access by the public to those commodities which they desire and require; or, in other words, so high as to prevent the free movement of the traffic, nor may a rate be so high as to practically divert a shipper's profit into the treasury of the carriers, and thus destroy the shipper's business. But these considerations are in a measure secondary, and can only apply after the first requisite of just compensation has been complied with. The prime consideration is the constitutional consideration of just compensation to the carrier. He is devoting his labor and property to a public use and under the law is compelled to do so. He may not refuse the traffic. He must respond to its demands. But for his service and his property he is entitled to just compensation, and no law can deprive him of it.

It is further said that just and reasonable rates need not necessarily guarantee a profit to the carrier. But this is simply another way of applying and illustrating the rule that a person is entitled to the fair and reasonable value of his property for the highest use to which it can reasonably and fairly be put.

Of course, a poorly and injudiciously projected road, which is not a reasonable commercial necessity, and is not commercially justified, and which is poorly and wastefully operated, can not expect to extort a profit out of the patrons which may be necessarily dependent upon it.

It is the value of the property for a reasonable use that is to be determined. An expensive house situated in the midst of a swamp would add no considerable value to the property, and the owner would not be entitled to a compensation for the cost of his house.

A house well located commercially may by ill usage depre-
167 ciate, and in determining its value for any purpose the expense of restoration would have to be considered and deducted.

Reasonable rates are therefore always to be based upon normal conditions, and determined with a view to whether or not the road is reasonably justified as a commercial enterprise, is a reasonable commercial necessity, is normally operated with reasonable economy and skill.

But when all is said of those characteristics of a just and reasonable rate, it is still true that the distinguishing characteristic of a just and reasonable rate is just compensation, and that these other characteristics are what is known in logic as incidental characteristics.

The constitution fixes this absolute point below which no carrier can be compelled to go. The interstate commerce act does not permit him to go above it. Anything more than this is a violation of this law, and anything less is a violation of the constitutional rights.

The next question is, How far does this distinguishing characteristic extend?

Inasmuch as it is the entire body of the property which is devoted to the public use, does this characteristic extend merely to the entire body of net revenues returned to the carriers, or does it extend to and characterize each particular rate and segregated element of the income?

In theory and on principle this latter proposition ought to be true. Each rate ought in and of itself, in order to be just and reasonable, furnish just compensation for the service rendered, and if each rate were just and reasonable the entire body of net returns would also be just and reasonable. In Missouri, Kansas & Texas R. R. Co. v. Interstate Commerce Commission, cited above, the court said: "Reason-
168 ably interpreted the statute, by which alone the Interstate Commerce Commission derives its power, unmistakably requires that all rates prescribed thereunder shall be just and reasonable within the constitutional guaranty, and also that they shall not be unjustly discriminatory or unduly preferential; and those requirements plainly operate as limitations upon the power of the commission."

No doubt it is the spirit and intent of the interstate commerce act that each particular rate shall be in and of itself a compensatory rate, and that the theory of the statute is that if each rate is in and of itself just and reasonable the entire body of net returns will also be just and reasonable.

But because of the many stubborn and obtrusive difficulties in the way of the practical application of this proposition, because it is practically impossible with any degree of satisfactory accuracy to determine the cost of a particular traffic, or the proportion of the company's property devoted to its use, or whether or not in and of itself it yields a profit, and because also the carriers have a right to and frequently do temporarily carry commodities at less than cost for purposes of ultimate future benefit; and because also it is some-

times necessary and requisite to compel them to carry commodities at less than cost on grounds and for reasons of public policy, it has been held in actions based upon the charge of confiscation through the reduction of a single rate or segregated portions of the general body of business, that this distinguishing characteristic of just compensation does not extend to a single rate, and need not be considered in determining whether or not it is just and reasonable, beyond the question as to whether or not it so affects the general body of net returns as to reduce them to less than just compensation.

In other words, confiscation cannot be predicated upon a single rate in and of itself, particularly because it is impossible
169 to ascertain the true facts in reference thereto, but can only be predicated upon a single rate as it relates to and affects the general body of net returns. So that in inquiring as to the justness and reasonableness of a particular rate this constitutional question need not be considered any further than the relation of the rate to and effect upon the general business of the carrier and its entire body of net returns.

It is contended that the following cases, decided by the judges of the Eighth Circuit and the Supreme Court, are authorities against this contention and establish the doctrine that a rate must be compensatory in and of itself. (Southern Ry. Co. v. St. Louis Hay Co., 214 U. S., 297; Stickney v. Interstate Commerce Commission, Supreme Court, January 10, 1910; Peavey & Co. v. Union Pacific Ry. Co. (Eighth Circuit), 176 Fed., 409.)

It will be observed, however, that those cases involved charges for incidental services rendered by and to carriers in aid of transportation, which charges are by the terms of the interstate commerce act required to be stated separately. The charges in the Hay case were charges for a special privilege "in no sense a part of the transportation and outside thereof."

The charges in the Stickney and Peavey cases were charges paid by the carriers to third persons who rendered services in aid of transportation, and section 15 of the interstate commerce act makes it the duty of the commission to determine the value of those services in and of themselves at a just and reasonable rate.

Manifestly an order made in the exercise of this power, absolutely or in part destroying an incidental charge considered to be just and reasonable in and of itself, is confiscation of the grossest kind
170 in addition to being a gross abuse and perversion of authority and the taking of property without due process of law.

It seems clear, therefore, that in cases involving a single rate, such as are the cases at bar, unless it is clearly shown that the relation and effect of the single rate to and upon the general body of net returns is such as to reduce the general net returns to less than that which is just and reasonable, no case of confiscation has been made out.

The defendant claims that this conclusion must necessarily determine these cases in its favor. There is no evidence in the record clearly showing, or indeed attempting to show, that this lumber rate

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prescribed by the commission will so affect the general body of net returns as to materially reduce them from what they have been, and it is conceded on all sides that the carriers are and have been fairly prosperous, and that their net incomes have been fairly satisfactory at least.

The carriers concede that they are unable to determine the cost of this traffic in and of itself, and that they are unable to say with any satisfactory accuracy whether or not they make a profit upon it, but they have all conceded that in their judgment, speaking as experts, the lumber traffic has not been confiscatory, and has not been performed for less than cost.

And the defendants claim that no confiscation having been shown it necessarily follows that the rates are just and reasonable.

It must be remembered, however, that this rule confining the inquiry as to confiscation in the matter of a single rate to the relation and effect of that rate to and upon the general body of net returns is not a rule based upon theoretical justice, but is a rule of convenience compelled by the exigencies of the situation. It is founded upon compulsion, and not upon principle. Furthermore, like all
171 other rules of law, it is intended and promulgated in the interests of justness and reasonableness, and not to promote injustice and unreasonableness. It cannot be used as a shield behind which the commission may hide, and with which they may protect themselves in the arbitrary and inequitable exercise of their powers. It is true the commission is an administrative body, exercising delegated legislative powers, and that the wisdom and expediency of the lawful discharge of their administrative powers may not be questioned by the courts.

Nevertheless, it must be remembered that the power of the commission to fix and determine rates is a limited power. In Missouri, Kansas & Texas Ry. Co. v. Interstate Commerce Commission, 164 Fed. 645, the court said: "Power to determine and prescribe what are just and reasonable maximum rates to charged in interstate commerce is in a limited way conferred on the Interstate Commerce Commission by section 15 of the interstate commerce act."

It is not true that within the specified limits of its jurisdiction an administrative body is as untrammelled as is a legislative body. Within constitutional limitations a legislative body is absolutely beyond control and may pass bad, vicious, injudicious, and calamitous laws.

But an administrative body is not so free to do as it pleases, but in addition to those specific limitations pointed out by the constitution and the particular provisions of its organic law, is always and forever limited and controlled by the spirit and intent and the fundamental principles of the organic law creating it. It may not, therefore, while acting within the forms of its delegated powers, promulgate rates and regulations which in effect violate the spirit and intent of those powers.

It is the intent and purpose of the interstate commerce act
172 that the commission shall determine and prescribe just and reasonable rates, just and reasonable regulations, just and reasonable conduct and practices, and shall prevent unjust discrimination and undue preferences.

It shall not make or permit any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or particular description of traffic "in any respect whatsoever," nor shall it subject such persons, entities, localities, or particular descriptions of traffic to any undue or unreasonable prejudice or disadvantage "in any respect whatsoever."

They must not only be just and reasonable so far as the matter of compensation is concerned, but must be further just and reasonable in all respects. They must exercise their power in a just and reasonable manner and arrive at their conclusions through just and reasonable processes, and those conclusions must be just and reasonable in all respects. They may not be unjust and unreasonable in any respect whatsoever. They cannot content themselves with arriving at a result technically and in terms and form just and reasonable through an arbitrary, unjust, and unreasonable exercise of their powers. Justness and reasonableness must permeate, tincture, and characterize the entire proceeding, and the result must also be in truth, in spirit, and in fact just and reasonable, and not merely so in form and terms.

A rate may be unassailable on constitutional grounds, may be absolutely free from confiscatory features, and yet in and of itself be so inherently vicious, unfair, and unjust as to manifest a gross and arbitrary disregard of the entire spirit and intent of the interstate commerce act.

A law passed in the interests of and to promote justness and reasonableness may not be used to perpetrate injustice and unreasonableness any more than the statute of frauds can be used as an instrument to perpetrate fraud.

173 For this reason there does inhere in the federal courts of equity power to review rates made by the commission above and beyond constitutional questions and questions as to the technical limits of delegated power, and to inquire whether or not the delegated power has been exercised in a just and reasonable manner, and within the true spirit and intent of the law, and to relieve from such orders as, though not technically confiscatory or discriminatory and not technically beyond the terms of the statute, are nevertheless so inherently inconsistent, unjust, unreasonable, and violative of common right as to be on their face unjust and unreasonable orders in the common sense of the terms.

In the case of the Interstate Commerce Commission v. Illinois Central R. R. Co., decided by the Supreme Court January 10, 1910, Mr. Justice White uses the following language: "Beyond controversy, in determining whether an order of the commission shall be suspended or set aside, we must consider (a) all relevant questions

of constitutional power and right; (b) all pertinent questions as to whether the administrative order is within the scope of the delegated authority under which it purports to have been made; and (c) a proposition which we state independently, although in its essence it may be contained in the previous one, viz, whether, even although the order be in form within the delegated power, nevertheless it must be treated as not embraced therein, because the exertion of authority which is questioned has been manifested in such an unreasonable manner as to cause it in truth to be within the elementary rule that the substance and not the shadow determines the validity of the exercise of the power."

In Louisville & Nashville R. R. Co. v. Interstate Commerce Commission, decided April 9, 1910, by the Circuit Court for the
174 Western District of Kentucky, the court used this language: "If the order were so unreasonable or so manifestly unjust as to induce the belief that the fundamental principles of rational justice had been disregarded * * * it would be our duty to prevent such a consequence by awarding an injunction." In Peavey & Company v. Union Pacific Railway Company, recently decided by the judges of the eighth circuit, the court said: "The Interstate Commerce Commission is an administrative tribunal and the wisdom and expediency of the lawful exercise of the discretion delegated to it under the Constitution and the statutes is not reviewable by the courts. But the power is vested in and the duty is imposed upon the circuit courts to relieve from orders of the commission which * * * though in form within its delegated power evidence so unreasonable an exercise of it that they are in substance beyond it." In Stickney v. Interstate Commerce Commission (164 Fed. 638, 644, 645) the court said: "The finding of facts on controverted and conflicting evidence by such bodies, when not brought about by fraud or mistake, is generally conclusive and ought not to be disturbed by the courts; but when facts found, conceded, or established without dispute admit of but one legal conclusion and a different and erroneous one is reached by reason of a misconception and misapplication of law by such bodies, their action is subject to review and may and ought to be avoided by the courts."

These decisions do not mean that the courts may substitute their own opinion for that of the commission. They do mean, however, that whenever an order is so inherently inconsistent with and violative of the fundamental principles of rational justice as to clearly evince an arbitrary disregard for and perversion of the true spirit and intent of the interstate commerce act, it is an unlawful and unauthorized order, and one from which the courts have power and are bound to grant relief.

175 Applying the principles arrived at in the foregoing discussion to the facts exhibited in the record, I am compelled to the following conclusions:

There is no evidence in the record from which it clearly and persuasively appears that the rates established by the orders here in controversy are confiscations.

It does, however, appear that they are very low rates, and unusually favorable to the shippers and to the public.

In restoring the superseded rates to the Pembina-Port Arthur line, including the old 50-cent rate over the Union Pacific system to Omaha, the commission has necessarily found and determined that the 50-cent rate to Omaha and Missouri River points was and is a just and reasonable rate, and the court has a right to take them at their own opinion on this point.

If it be true that a 50-cent rate to Omaha is a just and reasonable rate (and the commission has so found) then it must inevitably follow that the rate of 45 cents to St. Paul and 55 cents to Chicago are unjust and unreasonable rates.

The difficulties and expenses of transportation over the Union Pacific line and the northern lines are fairly equal. The route over the northern lines to St. Paul is longer. But St. Paul and Omaha have always been considered by the commission and by rate-making experts as on a parity as bases of rates.

The rate of 10 cents to Chicago from St. Paul is conceded to be an unusually low rate, and is conceded by the commission to be just and reasonable.

If, then, 50 cents to Omaha is just and reasonable 45 cents to St. Paul must be grossly unjust and unreasonable, strongly tending toward confiscation of property of the northern lines, strongly tending toward unjust discrimination against the northern lines and in favor of the Union Pacific, and strongly tending to unduly
176 prefer the territory served by the northern lines over that served by the Union Pacific, and in all these features to be a gross, arbitrary, and palpable disregard and perversion, not only of the spirit and intent of the law, but of the very terms of the law itself wherein it forbids unjust discrimination against carriers and localities and undue preferences to carriers and localities.

It will be said that the 45-cent rate, though confessedly less than that which is just and reasonable as found by the commission, is nevertheless not sufficiently so in its relation to the whole body of net returns, to result in confiscation. This is probably true. There is no evidence to show whether it is or not. But on the commission's own basis it is 10 per cent less than what the commission themselves have determined to be just and reasonable, and in itself is so inconsistent with and violative of the fundamental principles of rational justice, so incompatible with the commission's own expressed notions of what is just and reasonable as to manifest and evince upon its face an arbitrary violation of the spirit and intent of the law, and an arbitrary disregard of the fundamental principles of the interstate commerce act, out of which their powers grow and in accordance with which their powers must be exercised.

These orders further appear to be inconsistent in dealing with the differential between Omaha and Chicago and St. Paul and Chicago. Omaha and St. Paul are on a parity as bases of rates to Chicago, and yet the Union Pacific is allowed a 5-cent per one hundred pounds differential to Chicago, while the northern lines are allowed 10 cents. And the 10-cent rate from St. Paul to Chicago is and always must be an exceedingly low rate because of water competition. It seems absurdly inconsistent to compel the Union Pacific road to make the haul from Omaha to Chicago for 5 cents and
177 allow the northern lines 10 cents for the same haul, and further illustrates the inconsistency of the commission's order.

In determining the issues before it the defendant ordered the rates from the coast territory to the so-called Pembina-Port Arthur line, and destinations west thereof, restored to the basis in existence immediately prior to November 1, 1907. To the territory east of that line it permitted an advance not to exceed 5 cents per hundred pounds over the rates in effect immediately previous to November 1, 1907. The defendant in this way presented the matter in a double aspect and in the consideration of the questions involved in these cases, the master has followed the same course and will state his conclusions in that order; that is to say:

(1) Does the evidence justify or require that the orders of the defendant, restoring the rates in existence prior to November 1, 1907, on and west of the so-called Pembina-Port Arthur line shall be enjoined; that is to say, does the evidence, giving to it all of the weight to which it is fairly entitled, overthrow the presumption that the orders in that regard are valid or, applying the test indicated by the recent decision of the Supreme Court of the United States in Interstate Commerce Commission v. Illinois Central Railroad Company et al. (— U. S., —), does the evidence establish that "the assertion of authority which is questioned has been manifested in such an unreasonable manner as to cause it in truth to be within the elementary rule that the substance and not the shadow determines the validity of the exercise of the power?"

(2) Turning to that portion of the orders setting aside the rates filed by the carriers and effective on November 1, 1907, to points east of the so-called Pembina-Port Arthur line, and in lieu thereof, permitting an advance over the preexisting rates not to exceed
178 5 cents per hundred pounds, and applying the same tests above referred to, are the results such as to lead to the necessary conclusion that the injunctive order of this court should issue?

Dealing with these questions in the order stated, it appears that in considering the conclusion reached by the defendant, the rate from the coast district to Omaha may be taken as illustrative.

The short line distance from Portland to Omaha is stated by the commission in its decision in the so-called Oregon case (No. 1327) to be 1,799 miles. From the exhibits offered before the commission it appears that this is substantially correct, and that the 50-cent rate restored by the orders of the commission results in revenue of

5.56 mills per ton mile. To Kansas City, another Missouri River point to which the same 50-cent rate applies, the distance appears to be 2,030 miles, with a resulting ton mile earning of 4.92 mills. Using these points as fairly illustrative of the character of the coast rates to the so-called Missouri River territory, as they fairly may be used, it is difficult to escape the conclusion, if it were the function of this court to fix a just and reasonable rate upon this traffic for the service rendered to points such as these, that rates of this character are unduly low. That is not the duty of this court, however, and the action of the commission in ordering these and all other rates to this so-called Pembina line restored, and thereby approving them as just and reasonable, is to be tested by the rules hereinabove referred to.

The revenue per ton mile thus returned is much below the average revenue per ton mile derived from all commercial business on the lines of either of the complainants. It is below the average revenue per ton mile from lumber on the Union Pacific system for any of the recent years. It is substantially below average earnings
179 per ton mile on numerous other commodities, many of which may be denominated low grade in their character, moved over the Union Pacific system from Portland and coast points to Omaha and other eastern terminals. In the opinion of witnesses produced by the carriers, including the freight traffic manager of the Union Pacific Railroad Company, this 50-cent rate is unreasonably low. From what has been said above, it can not be denied that there was substantial evidence that the rates in question to Missouri River points are at least upon a low basis upon the traffic in question in these cases, but it is the finding and conclusion of the master that the evidence upon this branch of the cases is not so clear and conclusive under the rules above referred to as to justify a recommendation that an injunction be issued against that portion of these orders.

The same finding and conclusion is reached regarding the rates generally to destinations on and west of the so-called Pembina-Port Arthur line. The master, therefore, recommends that the prayer for injunction against the orders of the defendant, disapproving the rates filed by the complainants to destinations on and west of the Pembina-Port Arthur line and requiring the restoration of the rates to these destinations in effect immediately prior to November 1, 1907, be denied.

In reaching its conclusion that the rates in question to Omaha and other points on the Pembina-Port Arthur line should be restored to the basis in effect just prior to November 1, 1907, it is to be presumed that the defendant acted under the authority delegated to it by the act to regulate commerce and the amendments thereto; it is to be presumed that thus acting under the delegated authority the defendant approved and established the preexisting rates as just and reasonable for the service involved. In fact, an examination of the opinions and orders of the defendant in these cases clearly shows that such
180 was the judgment of the defendant. As already seen, the defendant is without power to establish rates upon any other

basis, and it is, therefore, the irresistible conclusion that for the distance and under the conditions involved the preexisting scale of rates to this line was, in the opinion of the defendant, just and reasonable. The rate from Portland to Omaha seems to have been used by the defendant in reaching its conclusions as fairly illustrative, and we are therefore furnished in these cases, by the defendant itself, with a valuable measure for determining whether its orders in disturbing rates here involved, but to points east of the Pembina-Port Arthur line, should also be supported. If we find that for equivalent or greater distances and under substantially similar conditions a similar rate was condemned and a lesser rate required, we may properly inquire for the reasons for this seeming inconsistency, and unless satisfactory reasons appear the final inquiry is necessarily presented whether a case such as that pointed out in the decision of the Supreme Court in Interstate Commerce Commission *v.* Illinois Central Railroad Company et al., *supra*, is not presented. Stated differently, the inquiry is whether the act of the defendant, without apparent reasons, in disapproving the identical rate of 50 cents per hundred pounds for substantially the same or a greater distance, and requiring a lower rate for apparently the same character of service, is not the exercise of authority manifested in such an unreasonable manner as to be beyond the power delegated to the defendant.

This inquiry necessarily follows for the reason that, having prescribed a rate of 50 cents per hundred pounds as the measure of a just and reasonable rate for a given distance, it cannot be true in reason that for the same or a greater distance, under similar circumstances of transportation, a substantially lower rate is at the same time just and reasonable.

181 In considering this branch of the case, it is to be understood that the distance from Portland to Omaha is but typical and illustrative, and that the same rate applies from many other coast points of production and to other Missouri River points of destination, resulting in a variety of combinations of distances varying within considerable limits. So, also, in considering the rates to St. Paul and Minneapolis, over the lines of the Great Northern and Northern Pacific systems, the same conditions are true. The coast rates apply to St. Paul, Minneapolis, and Duluth from a variety of shipping points in the coast territory reaching to the international boundary, so that as to the rates over these lines a variety of combinations of distance may be found. From Tacoma, Washington, to Minneapolis, via the Northern Pacific lines, is substantially 1,896 miles; from Portland to St. Paul, via this line, it is 2,052 miles, and as an illustration of longer hauls to St. Paul, via this line, the distance from Astoria to St. Paul is 2,072 miles. Substantially similar results are obtained upon the Great Northern lines.

It is therefore not unfair to adopt an average of conditions, and, indeed, this seems to have been the basis upon which the defendant proceeded.

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It will be recalled that prior to the reduction in 1893 by the Great Northern the basis of rates on lumber and forest products to St. Paul and to Omaha from the Pacific northwest was the same. The rate to each point was then 55 cents per hundred pounds. The reasons which led to the reduction in the rate to St. Paul at that time have already been considered, and the disturbance of the equal basis of rates to these points seems to have been the result of competitive and market conditions of a special or exceptional character. It is understood that upon many other items of traffic rates between
182 Omaha and St. Paul on the one hand, and the coast territory on the other, have always been the same, and, indeed, in the recent decision by the defendant of the case of the City of Spokane et al. *v.* Northern Pacific Railway Company et al., decided June 7, 1910, 19 I. C. C., 162, rates on classes and commodities generally to Spokane territory are fixed upon the same basis from St. Paul as from Omaha. This decision involves westbound traffic, it is true, but in it the defendant used the following language, which seems to support the conclusion that, in the absence of exceptional circumstances, rates applying between St. Paul and Omaha on the one hand, and points in the coast territory, as well as the Spokane territory, on the other, should normally be upon an equal basis.

Thus the commission said in the case above cited:

"There is no condition of construction, or operation, or financial result which would justify the Union Pacific lines in maintaining a higher rate for 1,500 miles from Omaha west toward Portland than is maintained by the Northern Pacific and Great Northern for a corresponding distance west from St. Paul toward Seattle."

While, as stated, it is true that this observation relates to westbound traffic, and perhaps is not conclusive in considering this eastbound traffic, it nevertheless is persuasive, and in the absence of anything in the record before the master indicating differences in conditions in the eastbound traffic to Omaha, as compared with the eastbound traffic to St. Paul, it may be regarded in connection with the other considerations referred to as an important matter for consideration.

The fixing by the defendant, therefore, of rates upon an equal basis between the points under discussion and the equal relation of rates of long standing referred to in the oral argument between
183 these points seems to lead to the conclusion that the transportation conditions applying between these points are substantially alike.

Before the commission in these proceedings, the complaining shippers urged that there should be equal rates upon this lumber traffic from the coast to St. Paul and to Omaha. These shippers urged that the 40-cent rate in effect to St. Paul and Minneapolis prior to November 1, 1907, should be applied to Omaha and the Missouri River territory generally, and it is fairly to be inferred that this position was taken in accordance with a conviction that conditions commercial, as well as otherwise, were so alike as to require equal rates.

From the deliberate conclusion, however, reached by the defendant that the 50-cent rate was just and reasonable upon this traffic to Omaha it is plain that the 40-cent rate asked by the shippers could not be.

Is it, therefore, possible in view of these various considerations to support the order of the defendant requiring the Northern Pacific and the Great Northern lines to withdraw the 50-cent rate made applicable by the tariffs of November 1, 1907, to St. Paul and common territory and to install instead a rate of 45 cents?

As its reasons for permitting an advance east of the Pembina-Port Arthur line, the defendant said in the so-called Washington case (No. 1329):

"To certain points farther east, involving longer hauls, it is believed that there was justification for some advance in view of the less revenue per ton mile accruing to the carriers from this traffic."

The controlling reason, therefore, that appeared to move the defendant to permit an advance of not to exceed 5 cents per hundred pounds was the longer haul involved to points east of the Pem-
184 bina-Port Arthur line and the consequent lesser revenue per ton per mile. St. Paul, Minneapolis and Duluth are east of the Pembina-Port Arthur line and, as already shown, traffic to these points from the coast territories probably involves on the average substantially longer hauls than to Omaha; certainly traffic to the northern destinations referred to involves no lesser haul than to Omaha, and it may safely be said that the average distance between points which, under the commission's orders, take the 45-cent rate, is generally greater than the average distance between points where under the commission's orders the 50-cent rate applies.

The revenue per ton mile, however, according to the Great Northern and Northern Pacific lines, even under the 50-cent rate published by them in their tariffs of November 1, 1907, is in many important instances measurably less than the revenue per ton mile accruing upon traffic to Omaha under the 50-cent rate approved to that point. Under the 40-cent rate the revenue per ton mile on traffic from Portland to St. Paul as shown by the record was 3.90 mills, and under the 50-cent rate, contained in the tariffs of November 1, 1907, it would be 4.87 mills. From Tacoma to Minneapolis, as shown by the evidence, under the 40-cent rate the revenue per ton mile was 3.98 mills, and under the 50-cent rate would be 5.27 mills. Under the 50-cent rate approved from Portland to Omaha the revenue per ton mile is 5.56 mills. These figures may be taken as fairly representative of conditions and seem to clearly demonstrate that the revenue per ton mile earned by the carriers transporting this traffic to St. Paul and common points even under the 50-cent rate would be substantially less than the revenue per ton mile accruing to carriers in the traffic to Omaha, and therefore if the reason given by the commission for permitting an advance in rates to points east of the Pembina-Port

Arthur line seem to it to be of sufficient weight to authorize
185 their action in that regard, it is impossible to understand why the same reasons do not compel a recognition of the 50-cent rate to St. Paul as just and reasonable.

Notwithstanding the apparently conclusive character of the result thus indicated by applying the measure thus furnished by the defendant for determining a just and reasonable rate for the distance and under the conditions in question it may be said to still be the duty of the court upon the whole record before it to determine whether the 50-cent rate in and of itself is in anywise unjust or unreasonable to be applied to this traffic to St. Paul and points taking the same rate.

The complainants sought to prove the issue in this regard by various methods. They called numerous witnesses of wide experience in railroad traffic affairs and these witnesses expressing their opinion and adding reasons therefor were agreed not only that the 40-cent rate previously in effect to St. Paul was unreasonably low, but that the entire body of rates upon this traffic to eastern points of delivery was below what they properly should be. Witnesses for the railroad companies offered in addition numerous exhibits comparing the pre-existing rates, as well as the proposed rates and earnings therefrom, with lumber rates from other sections of the country and with lumber rates applying upon their own lines. There were also numerous comparisons of the rates and earnings on other commodities with lumber based both upon earnings per ton mile and upon earnings per car. In addition to these methods of dealing with the questions involved, witnesses of experience sought to further support the position of the railroads by the making of approximate computations of the cost of handling this lumber traffic. Regarding these computations, however, it may be said that the results while instructive as showing approximate or average results are not sufficiently
186 close to the mark to be conclusive. The evidence relating to the expense resulting from the haul of empty cars westbound seems clearly to indicate that there is a large element of expense involved in this traffic on that account on the Northern Pacific and Great Northern lines at least. And it may be said that the opinions of the witnesses upon this branch of the proof offered tend strongly to support the judgment of the same and other witnesses that the rates in effect prior to November 1, 1907, in so far as they covered the longer hauls, produced less revenue in comparison with the probable cost involved in the traffic than reasonably might be demanded.

A careful consideration of all of the testimony and exhibits offered before the master in behalf of the defendant upon the question of the character of these rates has failed to disclose any substantial proof in opposition to that offered on this subject by the complainants. The effect which, under the authorities must be given to the conclusions of the defendant, has led to the result as above indicated that this record does not present evidence so clear and convincing as to justify in the opinion of the master an injunction against the rates

approved by the commission to points on and west of the Pembina-Port Arthur line, but weighing the proof applicable to the rates applying to points east of that line in connection with the conclusions reached by the defendant regarding the rates to the line and in the light of the reasons advanced by it for those conclusions, it is the finding and opinion of the master upon the entire record that the orders of the defendant adjudging the rates filed by the carriers to points east of the Pembina-Port Arthur line on November 1, 1907, to be unjust and unreasonable cannot be supported and that, indulging every reasonable inference from the proof and the necessary inferences from the findings of the defendant itself, the orders in
187 so far as they displace the rates contained in the tariffs of November 1, 1907, to points east of the Pembina-Port Arthur line and in lieu thereof permit only the advance of not to exceed 5 cents per hundred pounds over the preexisting rate, should be set aside and enjoined.

By the effect of the orders of the defendant finding the rates to points east of the Pembina–Port Arthur line to be unjust and unreasonable, the rates contained in the tariffs of November 1, 1907, not only to St. Paul and common points, but also rates to destinations further east, were disturbed. The tariffs of November 1, 1907, fixed a rate upon lumber from the coast territory to Chicago of 60 cents. This rate was constructed by adding to the rate of 50 cents, fixed in said tariffs, to St. Paul, a rate of 10 cents per hundred pounds to cover the transportation from that point to Chicago. There is nothing in the record nor in the decisions or orders of the defendant indicating that this rate of 10 cents was complained of, and it appears from the manner in which the defendant disposed of the cases that this rate was approved as a factor in determining the rate to Chicago. This necessarily follows because, complying with the orders of the defendant and using the rate fixed by it to St. Paul of 45 cents, the carriers filed and published a rate of 55 cents to Chicago.

A large amount of testimony appears in the record, much of which was before the defendant and some of which was added in the hearings before the master, relating to the circumstances and conditions under which the rates on lumber between St. Paul and similar points and Chicago and points on the Mississippi River, including St. Louis, have been in the past made and controlled. It is said, and seems amply supported by the proof, that the rate of 10 cents from St. Paul to Chicago is made in competition with carriers of lumber on
188 the Great Lakes from Duluth to Chicago, and to some extent, so far as points on the Mississippi River are concerned, with carriers transporting lumber upon the Mississippi River. In the past it is probable that the lumber traffic on the Mississippi River had a larger effect upon the rates of the railroad lines competing therewith than at the present day, but from the history of the development of the lumber industry in the North it is plain that the rail rates from northern points, such as St. Paul and Duluth to Chicago and Mississippi Valley points to and including St. Louis, have always been

and are to-day affected and held to a low basis by the various forms of water competition referred to. The distance from St. Paul to Chicago by railroad is about 410 miles; the earnings per ton mile on traffic under the rate of 10 cents in effect are approximately 5 mills. An examination of the various tables of rates contained in this record applied on numerous railroads in various parts of the country indicates that for a distance of this kind this rate is upon a reasonably low basis. It is impossible to see wherein a lower rate than this could be justified or at least required for the distance in question, and, therefore, having reached the conclusion that the orders of the defendant disapproving the rate of 50 cents published to apply on November 1, 1907, to St. Paul and common points cannot be supported it must necessarily follow that the orders of the defendant in disapproving the rate filed and published to apply on November 1, 1907, of 60 cents to Chicago must also be disapproved and should be for the same reasons enjoined. This traffic, however, is moved to Chicago and other points east and south thereof via Omaha and other points on the Missouri River in competition with the lines operating through St. Paul and Minneapolis. The 60-cent rate established in the tariffs on November 1, 1907, to Chicago applied
189 via lines leading through Omaha and other Missouri River points. The distance from Omaha to Chicago is approximately 500 miles. It appears from the record that the carriers between Omaha and the Missouri River and Chicago on this traffic received 10 cents per hundred pounds out of the total rate to Chicago, although at times in the past in order to secure this amount the carriers west of the Missouri River have been required to allow all or a portion of this rate out of the earnings accruing to them from the rate to Omaha. In the tariffs of November 1, 1907, the effort was made to advance the rate to Omaha to 55 cents, whereby it appears that out of the rate proposed of 60 cents to Chicago the carriers west of Omaha would not have been compelled to have allowed the entire 10 cents out of their earnings accruing from the rate to Omaha. The question of divisions between carriers is not involved in the issues in these cases, and all that the court can consider in this regard is the question whether there is anything in the record to indicate that the addition of 10 cents to the rate of 50 cents approved by the commission to Omaha would be unjust or unreasonable for the transportation of this traffic from Omaha to Chicago. Considering all of the facts relating to the character of the 10-cent rate above referred to in its application between St. Paul and Chicago for the distance involved and under the conditions disclosed in the record, it cannot be successfully claimed that for the greater distance from Omaha to Chicago the same rate is either unjust or unreasonable. Regardless of the questions involved between the carriers in meeting competitive conditions in the rate to Chicago via Omaha the question is presented whether the orders of the defendant in disapproving the rate of 60 cents fixed by the tariffs of November 1, 1907, to Chicago can

be sustained, and for the various reasons hereinbefore referred
190 to it is plain that this rate, whether applied via St. Paul or via Omaha, neither was nor is unjust or unreasonable. If 50 cents was, as determined by the commission, just and reasonable to Omaha, it is impossible to understand wherein 60 cents was unjust or unreasonable for the added distance of approximately 500 miles to Chicago.

There is a recognized relation between these rates to the various points of destination east of St. Paul and Omaha, and Chicago has been taken hereinabove as typical only of conditions generally affecting rates to all such destinations; in fact in the orders of the defendant permitting an advance not to exceed 5 cents per hundred pounds east of the Pembina–Port Arthur line the commission proceeded on the theory that the relation referred to when observed would produce a relation of rates that would be just and fair and for this reason it is unnecessary for the court in determining the issues presented by these cases to deal with the orders of the defendant in their effect upon rates to points east of the Pembina–Port Arthur line other than as above indicated.

In conclusion, therefore, the master is of the opinion, and so finds, that the orders of the defendant adjudging the rates contained in the tariffs filed by the complainants and effective November 1, 1907, to points east of the so-called Pembina–Port Arthur line to be unjust and unreasonable cannot be approved; that the orders of the defendant requiring the rates to points east of said line to be withdrawn and in lieu thereof restricting the complainants to an advance of not to exceed 5 cents per hundred pounds to said points for the same reasons cannot be supported, and the master recommends that an injunction be issued against the orders of the defendant to the extent aforesaid, and that said orders, in so far as they adjudged the rates contained in the tariff of November 1, 1907, in question, to points east of
191 the so-called Pembina–Port Arthur line to be unjust or unreasonable and prescribed rates lower than those contained in said tariffs to said points in lieu thereof be set aside and annulled.

By the order in the so-called Potlatch case (No. 1346), which is one of the orders sought to be enjoined in these proceedings, the defendant fixed rates from points in eastern Washington, eastern Oregon, and Montana to points east of the Pembina-Port Arthur line, which were less by fixed differentials than the rate to the same territory from points on the Pacific coast. The justness and reasonableness of these differentials are not attacked in these cases, but it follows from what has been said above that as the order of the commission fixing base rates from Pacific coast points to territory east of the Pembina-Port Arthur line must be enjoined in so far as it forbids the collection of the rates fixed to that territory by the tariffs effective November 1, 1907, the order of the commission in the Potlatch case must likewise be enjoined to the extent that by the application of the differentials fixed by that order the rates from eastern Washington, eastern Oregon, and Montana are reduced below those fixed from the

same territory to points east of the Pembina-Port Arthur line by the tariffs effective November 1, 1907.

In the submission of testimony and in the arguments before the master, the questions presented by these cases have been considered principally with regard to the rate on fir lumber. That rate has been treated by both complainants and defendant as typical, and it has been so accepted and treated by the master in the foregoing findings. The relation between that rate and the rates on other lumber, shingles, and other forest products to points east of the Pembina-Port Arthur line was the same previous to November 1, 1907, and in the tariffs made effective on that date; and the orders of
192 the commission left that relation unchanged. No question is made by either party as to the fairness of this relation. From the findings that the defendant's orders condemning the rates of November 1, 1907, on fir lumber to points east of Pembina-Port Arthur line should be enjoined, it follows that those orders should be enjoined in so far as they condemn those rates and prescribe lower rates on other lumber, shingles, and other forest products to points east of that line, and it is so recommended.

In accordance with the foregoing conclusions the master recommends the entry of decrees in each of the said cases in the form hereto attached.

FREDERICK N. DICKSON,
Special Master.

ST. PAUL, MINN., *Aug. 27, 1910.*

Filed August 27th, 1910. Henry D. Lang, clerk.

193 United States Circuit Court for the District of Minnesota, Third Division.

NORTHERN PACIFIC RAILWAY COMPANY, Great Northern Railway Company, Chicago, Burlington and Quincy Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad & Navigation Company, *vs.* INTERSTATE COMMERCE COMMISSION.	Equity. No. 884.

This cause came on to be heard at this term and was argued by counsel, and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows:

That the order of the defendant in the two proceedings brought before it entitled Pacific Coast Lumber Manufacturers' Association v. Northern Pacific Railway Company et al., being I. C. C. No. 1329, and Southwest Washington Lumber Manufacturers' Association v. Northern Pacific Railway Company et al., being I. C. C. No. 1335,

dated June 2, 1908, as amended July 27, 1908, and as further amended September 1, 1908, and as further amended September 25, 1908; and the order of the defendant in that proceeding brought before it entitled Pacific Coast Lumber Manufacturers' Association v. Northern Pacific Railway Company et al., being I. C. C. No. 1054, dated June 1, 1908, as amended June 27, 1908, and as further amended September 1, 1908; and the order of the defendant in that proceeding brought before it entitled Western Oregon Manufacturers' Association et al. v. Southern Pacific Company et al., being I. C. C. No. 1331, dated June 1, 1908, and the order of the defendant in that proceeding brought before it entitled Potlatch Lumber Company et al. v. Northern Pacific Railway Company et al., being I. C. C. No. 1348, dated June 2, 1908, as amended July 27, 1908, insofar as said orders, or any of them, require the complainants herein to cease and desist from enforcing the rates prescribed by complainants' tariff effective November 1, 1907, and to prescribe lower rates than those prescribed by said tariff from points in Washington, Oregon, Idaho, and Montana to points each of the line drawn from Pembina, North Dakota, southward through Grand Forks, North Dakota; Moorhead and Breckenridge, Minnesota; Sioux City and Council Bluffs, Iowa; St. Joseph and Kansas City, Missouri; and thence to Port Arthur, Texas, along the Kansas City Southern Railway, be, and each of them hereby is, set aside and annulled, and the defendant and its members, their agents, servants, and representatives, are hereby perpetually enjoined and restrained from enforcing any of said orders insofar as they affect rates to points east of said lines.

WALTER H. SANBORN,
WILLIS VAN DEVANTER,
WILLIAM C. HOOK,
U. S. Circuit Judges.

194 And on the same day the following order noting the filing of the master's report was entered in said cause, to wit:

195 United States Circuit Court, District of Minnesota, Third Division. Chancery rule and order book.

GREAT NORTHERN RAILWAY CO. ET AL.
vs.
INTERSTATE COMMERCE COMMISSION.
} No. 885. Equity.

Aug. 27th, 1910.

And now comes Frederick N. Dickson, the duly appointed special master in chancery in the above entitled cause, and filed his report in the clerk's office of said court, under an order appointing him special master in chancery, which said filing is hereby entered and noted.

(Entered, C. R. "C," page 208.)

Thereafter and on the same day the following report of rulings upon exceptions and complainants' and defendant's exceptions were filed in said cause, to wit:

196 In the Circuit Court of the United States for the District of Minnesota, Third Division.

UNION PACIFIC RAILROAD COMPANY, OREGON SHORT Line Railroad Company, Oregon Railroad & Navigation Company, Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Chicago, Burlington & Quincy Railroad Company, and Oregon California Railroad Company, complainants, *vs.* INTERSTATE COMMERCE COMMISSION, DEFENDANT.	No. 883.
NORTHERN PACIFIC RAILWAY COMPANY, GREAT NORTHern Railway Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad & Navigation Company, complainants, *vs.* INTERSTATE COMMERCE COMMISSION, DEFENDANT.	No. 884.
GREAT NORTHERN RAILWAY COMPANY, NORTHERN Pacific Railway Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad & Navigation Company, and Southern Pacific Company, complainants, *vs.* INTERSTATE COMMERCE COMMISSION, DEFENDANT.	No. 885.

197 By order of the court above named, entered therein on the 13th day of February, 1909, the above entitled causes were referred to the undersigned, as special master in chancery, to take and report to said court the evidence, to examine the same, to make necessary computations, to find and state the facts in said causes, and to report advisory conclusions of law and recommend a proper form of decree therein.

Pursuant to said order, the testimony in said causes was taken and has been returned and filed in said court. And after hearing arguments of counsel, and on consideration, the undersigned, as such special master, did, on the 22nd day of July, 1910, pursuant to the terms of said order, exhibit to counsel his preliminary report and delivered to them copies thereof.

Thereupon, upon stipulation of the parties, it was ordered that said respective parties file with the undersigned on or before the 19th day of August, 1910, their objections and exceptions to said preliminary report, if any they had, and upon the 19th day of August, 1910, the defendant in said causes filed with the undersigned exceptions, a true copy of which is hereto attached and marked Exhibit "A," and the complainants filed with the undersigned exceptions, a true copy of which is hereto attached and marked Exhibit "B."

After hearing arguments of counsel and upon consideration, the master rules as follows upon said exceptions:

Defendant's exception No. 1 is overruled for the reason that the matter therein excepted to is fully covered in the specific finding of fact No. IV, and the suggested finding of fact is partial and unfair.

Defendant's exception No. 2 is overruled. The difference between the finding and the suggested finding is one of degree, and in the master's judgment the finding excepted to is amply sustained by the evidence.

198 Defendant's exception No. 3 is overruled. The suggested finding that at the time of the installation of the 40-cent rate it was not known whether there would be an empty east-bound car movement, is not sustained by the evidence, and under the circumstances existing at that time, is obviously untrue.

Defendant's exception No. 4 is allowed and the master's report modified accordingly.

Defendant's exception No. 5 is allowed and the master's report modified accordingly.

Defendant's exception No. 6 is overruled. The finding objected to is sustained by the evidence and the suggested finding is amply covered in other portions of the report.

Defendant's exception No. 7 is overruled for the reason that it is not sustained by the evidence.

Defendant's exception No. 8 is overruled. The finding objected to is, in the master's judgment, amply sustained by the evidence and the suggested finding that there is no satisfactory explanation of the sharp and sudden decrease in the percentage of east-bound loaded car mileage over west-bound car mileage in the year ending June 1, 1907, is not true. In the master's judgment the explanation was ample.

Upon argument, the defendant withdrew exception No. 9 objecting to the recital of the testimony of R. I. Farrington. The finding suggested in exception No. 9 is refused as not being sustained by the evidence.

Defendant's exception No. 10 is refused as not being sustained by the evidence.

Upon argument in reference to defendant's exceptions Nos. 11 and 12 it was agreed that the requirements of these exceptions would be met by inserting the percentages of dividends paid in recent years by the complainants' roads and the master's report has been modified accordingly.

Defendant's exception No. 13 is overruled. To say that the 50-cent rate involved was not established by the order of the com-
199 mission because it had theretofore been in effect is a quibble. Upon the consideration of the case it was the commission's duty to prescribe the maximum rate for the future, and they did prescribe this rate and thereby established it.

Defendant's exception No. 14 is overruled. The finding objected to is amply sustained by the evidence.

Defendant's exceptions Nos. 15 to 24 inclusive are each and all of them exceptions to various findings of fact in the master's report, and are objected to on the ground that they are not sustained by the evidence or are immaterial. Each and all of these exceptions are overruled by the master for the reason that in his judgment they are all amply sustained by the evidence and are material and relevant.

Defendant's requested finding of fact No. 1 is refused on the ground that it is not sustained by the evidence.

Defendant's second requested finding of fact is refused on the ground that it is not sustained by the evidence.

Defendant's third requested finding of fact is refused. The application of a 45-cent rate referred to in the second paragraph is not as stated in said paragraph and the requested finding is not sustained by the evidence.

The defendant's fourth requested finding of fact is refused on the ground that it is immaterial and does not support the conclusion therein arrived at.

Defendant's fifth requested finding of fact is refused on the ground that it is not sustained by the evidence. While the master has found that the general net returns of the carriers have been fairly satisfactory and has also found that there is no evidence in the case tending to show that the rates charged upon lumber were confiscatory, he has also found that the rates charged upon lumber were very low rates. The finding herein amounts to an affirmative finding that the carriers have been receiving adequate compensation for their
200 lumber traffic. In the master's judgment the evidence does not sustain such finding.

Defendant's sixth requested finding of fact is refused, because not sustained by the evidence.

Defendant's seventh requested finding of fact is refused. While some of the statements therein contained are true, the finding, as a whole, is immaterial.

Defendant's eighth requested finding of fact is refused as immaterial and already covered by the findings of fact. The master has expressly found that there is no evidence showing the relation and effect of the lumber rate upon the general body of net returns.

Defendant has filed 37 specific exceptions to the master's conclusions of law, numbered 1 to 37, inclusive, in which defendant takes exception to the conclusions which the master has arrived at in his report. All these various conclusions assailed by these exceptions are

sufficiently explained in the master's report and said exceptions are each and all of them overruled for the reason stated in the report.

Exception No. 35 of the conclusions of law raises the question whether or not the court has the power to modify the commission's orders in the manner attempted in the decrees recommended herein, it being the contention of the defendant that the court has no power to do anything further than either to enjoin the commission's orders in toto, or sustain them in toto.

This exception is specifically overruled. The commission dealt with the rates in question in a twofold manner, dividing their application by the so-called Pembina-Port Arthur line and applying a different rule to the territory east and west of said line. If this is a justifiable basis of division the court has a right to deal with the matter on such basis.

Referring to complainant's exceptions, exception 1 is par-
201 tially allowed and the master's report has been modified to the extent of limiting the period covered by said finding to a period beginning in the year 1901. Aside from this modification the exception is overruled.

Exception II is overruled. The master adhers to his original conclusions in this respect and thinks that the reasons for his position are sufficiently explained in his report.

Exception III is also overruled for the same reason.

Exception IV is also overruled for the same reason.

Exception V is also overruled for the same reason.

Exception VI is also overruled for the same reason.

Herewith the master files his final report of said causes, containing the modifications allowed hereinbefore.

Dated at St. Paul, Minn., this 27th day of August, 1910.

FREDERICK N. DICKSON,
Special Master in Chancery.

202 EXHIBIT A.

In the Circuit Court of the United States for the District of Minnesota, Third Division.

UNION PACIFIC RAILROAD COMPANY, OREGON SHORT Line Railroad Company, Oregon Railroad & Navigation Company, Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Chicago, Burlington & Quincy Railroad Company, and Oregon, California Railroad Company, complainants, *vs.* INTERSTATE COMMERCE COMMISSION, DEFENDANT.	No. 883.
NORTHERN PACIFIC RAILWAY COMPANY, GREAT Northern Railway Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad & Navigation Company, complainants, *vs.* INTERSTATE COMMERCE COMMISSION, DEFENDANT.	No. 884.
GREAT NORTHERN RAILWAY COMPANY, NORTHERN Pacific Railway Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad & Navigation Company, and Southern Pacific Company, complainants, *vs.* INTERSTATE COMMERCE COMMISSION, DEFENDANT.	No. 885.

Objections and exceptions taken by the above named defendant to the report of the special master herein, to whom these cases were referred to take proofs and report thereon.

CHARLES C. HOUPT,
United States Attorney.
LUTHER M. WALTER,
Special Assistant United States Atty.
Solicitors for Defendant.

203 Comes now the Interstate Commerce Commission, defendant in the above named cases, by its solicitors, and objects to the report of Hon. Frederick M. Dickson, special master herein, and excepts to the findings of fact and conclusions of law hereinafter set out.

(1) For that the master erred in that part of his report, page 12, wherein he stated:

"For the purpose of providing loads for the eastbound empty cars, and in that way getting back some proportion of the expense of hauling these cars east, the railroads installed the old 40-cent rate to St. Paul."

The master should have found substantially as follows:

"For the purpose of providing additional revenue and believing that 40 cents was reasonable compensation to begin with, the railroads installed the old 40-cent rate to St. Paul." (Rec., 1274, 1275.)

(2) For that the master erred in the following statement, page 12:

"The lumber industry in the coast district has grown to enormous proportions and become an exceedingly prosperous industry."

He should have found:

"The lumber industry in the coast district has grown to enormous proportions and has become a prosperous industry." (Rec., 1045, et seq.)

(3) For that the master erred in the statement of his finding of Fact IV, page 15, wherein he stated:

"The superseded rates were made voluntarily by the carriers in 1893, avowedly for the purpose of stimulating the lumber industry in the coast territory and thereby producing a traffic for the roads and more particularly and immediately for utilizing an eastbound empty car movement then prevailing. At that time the balance of trade was against the coast territory and there was a well defined eastbound empty car movement from the coast."

The master should have found:

"The superseded rates were made voluntarily by the car-
204 riers in 1893, as alleged at the hearing, for the purpose of stimulating the lumber industry in the coast territory and thereby producing a traffic for the roads which would furnish adequate revenue under the circumstances. The 40-cent rate was first made by the Great Northern Railroad and was announced several months prior to the date when that railroad was opened for business from Seattle. At the time the 40-cent rate was established it was not known whether there would be an empty eastbound car movement." (Rec., 1274, 1275.)

(4) For that the master erred in line 11, page 17, wherein he used the word "mills." He should have used the word "materials." (14 I. C. C., 4.)

(5) For that the master erred in failing to insert after the word "feet," in line 15, page 17, the following:

"Valued at the mills at $30,000,000.00." (14 I. C. C., 4.)

(6) For that the master erred in the finding, page 19, first paragraph:

"At the same time there also existed a financial depression, sometimes designated as the panic of 1907, which must also be considered in arriving at the causes of the depression then existing in the lumber business."

The master should have found:

"Even before the financial depression was felt on the Pacific coast, the lumber industry was greatly depressed and operations were largely decreased." (14 I. C. C., 7; Rec., 402.)

(7) For that the master erred in failing to insert after the word "cent" line 3, page 21, the following:

"At the time the 40-cent rate was established to St. Paul the empty car movement was not a fact to be considered in *in* making the rate." (Rec., 1274, 1275.)

(8) For that the master erred in his finding, beginning line 4, page 22, as follows:

"This sharp and sudden decrease in the percentage of east-bound loaded car mileage over west-bound loaded car mileage in the year ended June 1, 1907, was, however, not normal, but due to
205 temporary and unusual causes, viz, the construction of the Chicago, Milwaukee & St. Paul coast extension and the Seattle and Portland line, most of the supplies for which were taken out over the northern lines, and also to the unprecedented storms, snowfall, and excessive cold weather prevailing in the winter of 1906 and 1907, which resulted in a practical suspension of business on the through lines for three months."

The master should have found:

"There is no satisfactory explanation of this sharp and sudden decrease in the percentage of east-bound loaded car mileage over west-bound car mileage in the year ending June 1, 1907. The complainants, however, advance the theory that it was occasioned in a large degree by the carriage of supplies for the construction of the Chicago, Milwaukee & St. Paul coast extension and the Seattle and Portland line, to storms, snowfall, and excessive cold weather in the winter of 1906 and 1907. There is no evidence as to the empty car movement or the movement of east or west bound loaded cars during the years ending June 1, 1908, and June 1, 1909; nor is there any evidence as to the cost of handling or the revenue resulting from handling the lumber traffic subject to the order complained of in these cases. The evidence to show these facts is all in the possession of the complainants." (14 I. C. C., 16, 33.)

(9) For that the master erred in the following finding, beginning line 2 from the bottom of page 22:

"This increase is fairly illustrated by the testimony of the witness R. I. Farrington relating to the cost of operation of the Great Northern road. He testifies: 'Taking the year 1895 as 100 per cent, the cost per freight train mile for the calendar year 1900 was 143.82 per cent of 1895; for the eleven months ended November 30, 1907, the cost per freight train mile was 207.7 of 1895. Of course, in 1907 it is more than twice what it was in 1895 per freight train mile. Per freight car mile, using 1895 as 100 per cent, the cost in 1900 was 126.19 per cent, and the cost in 1907 was 162.77 per cent. Consequently it cost nearly 63 per cent more to haul a freight car one mile in 1907 than it did in 1895.'" (Equity Rule 76.)

The master should have found instead thereof:

"While the cost of operation has constantly increased, the economy of operation has kept pace therewith. The minimum
206 carload of lumber has greatly increased, engines haul much heavier trains, roadbeds have been improved so that the cost of hauling a single unit compared with the revenue therefrom is much less than in 1893." (Rec., 754, 761.)

(10) For that the master erred, finding XV, page 23, line 20, in failing to insert after the word "industry" the following: "and other traffic." (Rec., 1441.)

(11) For that the master erred, finding XVI, page 23, in inserting in the last line on said page the word "fairly."

(12) For that the master erred in inserting the word "fairly," line 3, page 24.

(13) For that the master erred in finding XVII, page 24: "By this order a rate of 50 cents per one hundred pounds over the Union Pacific system to Omaha and Missouri River points on said Pembina-Port Arthur line was established."

That finding should have been:

"By this order the rate of 50 cents per one hundred pounds, previously and for many years in effect, over the Union Pacific system to Omaha and Missouri River points on said Pembina–Port Arthur line was not disturbed." (14 I. C. C., 1 et seq.)

(14) For that the master erred in the finding, line 19, page 24:

"And that such revenue is far below the average revenue per ton mile on any of the complainants' roads, and that this 50-cent rate over this system to Omaha is a very low rate."

(15) For that the master erred in the finding, line 25, page 24:

"Omaha and St. Paul are on a parity as bases of through rates, and are so considered by the commission and by rate experts." (See commission's decision in Spokane v. Northern Pacific Railway Company, decided June 7, 1910, 19 I. C. C., 162.)

(16) For that the master erred in the finding, beginning last line, page 24:

207 "This rate will undoubtedly result in a revenue to the northern lines measurably less than the revenue yielded to the Union Pacific Line by the 50-cent rate to Omaha."

(17) For that the master erred in inserting in line 25, page 25, the following:

"While it is probable that."

(18) For that the master erred in his finding, beginning line 1, page 26:

"It is sufficient to say, that while there are differences between his conclusions and those reached by the witnesses produced by these companies on this subject, those differences appear to be minor in their character and relation to the whole subject. The basis adopted by these companies for the preparation of these schedules is approved and supported by the engineer employed by the defendant. So far as the examination by the defendant's engineer went, it is apparent

that the results reached are not widely apart from those reached by the engineers of the railroad companies." (Rec., 781 et seq.)

The finding is upon a matter wholly immaterial and irrelevant to the issues in these causes and is not supported by any evidence in the record.

(19) For that the master erred in inserting in line 24, page 26:

"And in fact all of the essential statistics necessary to a clear understanding of the results of the business of these two companies during the period covered by the figures."

(20) For that the master erred in his finding, last paragraph, page 26:

"Of the method made use of in these cases for the purpose of indicating the approximate value of these properties, it is perhaps sufficient to say that each method seems supported by ample judicial authority and to be of value in the consideration of the complex questions involved."

The finding is upon a mat'er wholly immaterial and irrelevant to the issues in these causes and is not supported by any evidence in the record.

(21) For that the master erred in the following finding, page 27, third paragraph:

208 "In the conclusion at which the master has arrived, it seems unnecessary to consider this argument further than to say that from the evidence it is reasonably plain that the value of the property of these companies devoted to the public service is substantially above the amount represented by the par value of their outstanding stocks and bonds."

This finding is not supported by the evidence in the record.

(22) For that the master erred in inserting the word "fair" in line 25, page 28.

(23) For that the master erred in the following finding, last line, page 28:

"Upon the whole record I find no evidence that tends to indicate that during the period covered by the evidence in this case the results from operation of either of these companies were in any degree excessive." (Rec., 646, 647, 14 I. C. C., 7.)

(24) For that the master erred in the following finding, line 5, page 29:

"On the contrary, upon a more critical consideration of the question of the true value of these properties in the light of the rule laid down by the Supreme Court of the United States in Smyth v. Ames, 169 U. S., 522, and subsequent decisions, if that were necessary or immediately germane to the issues here presented, it is probable that the net returns in recent years have been below rather than above the measure of a fair return upon the reasonable value of the properties used in the public service as defined in those decisions."

There is no evidence of original cost of construction, amount expended in permanent improvements, present cost of construction

compared with original cost of construction, the probable earnings upon the rates complained of, or operating expenses probable during life of order.

209 REQUESTED FINDING OF FACT.

The defendant objects and excepts to the failure of the special master herein to make each and every of the following findings of fact:

1. The rates provided for in the schedules to become effective November 1, 1907, were enjoined by the Circuit Court of the United States, having jurisdiction, and the same were never collected by the complainants herein. Shippers of lumber continued to pay the rates in effect prior to November 1, 1907, and no part of the revenues of the carriers were due to the increase in lumber rates provided for in November 1, 1907. (Complainant's Brief, 3.)

2. The net returns per mile of railroad for each of complainants was much greater at the time of the hearing before the commission than they were ten years before. Freight-car capacities had greatly increased, much larger train tonnage was hauled, train crews handled much more tonnage, engine capacity had greatly increased and much more than kept pace with the increased cost of labor or of construction. (Rec., 754, 761.)

3. The 50-cent lumber rate over the Union Pacific Railroad covers as a blanket rate all points from Medford, Oregon, 350 miles south of Portland, to Cascade Locks, 45 miles east of Portland, the center of origin being 152 miles south of Portland; this rate covers as blanket rate all destination points from Brule, Nebraska, 350 miles west of Omaha, to Omaha, the center of destination being 175 miles west of Omaha. The distance from the center of origin to center of destination is 1,676 miles. The per ton mile rate for the average distance is 5.96 mills.

The 45-cent lumber rate over the Northern Pacific covers as a blanket rate all points of origin from South Bend, Wash-
210 ington, to , 143 miles east of Tacoma, the center of origin being 16 miles east of Tacoma; this rate covers as a blanket all points of destination from Glendive, Montana, 676 miles west of St. Paul, to St. Paul, the center of destination being 338 miles west of St. Paul. The distance from center of origin to center of destination being 1,558 miles. The per ton mile rate is 5.78 mills. (Rec., 938, 1443.)

On all shipments to Chicago via Omaha upon which the rate is 55 cents, the Union Pacific receives for its haul only 45 cents. On all shipments to Chicago via St. Paul on which the 55-cent rate applied, the Hill lines received for the haul to St. Paul 45 cents.

4. Rates have been voluntarily put into effect and are now in effect from Spokane to Winnipeg over the Northern Pacific and the Canadian Northern and the Great Northern and the Canadian Northern of 37 cents per one hundred. Via the Northern Pacific the distance is

1,545 miles. Via the Great Northern, 1,356. From Bellingham, Washington, via the Northern Pacific to Winnipeg the distance is 2,094.3 miles, and the rate is 40 cents per one hundred pounds, out of which three cents is paid to the local road from Bellingham to Sumas Junction, 23.3 miles, leaving 37 cents to be divided between the Northern Pacific and Canadian Northern for 2,071 miles. The same condition prevails from points on the Tacoma and Eastern to Winnipeg, where out of a rate of 40 cents for a haul of 1,491 miles the Northern Pacific received as its share 36 cents. From Kendall, Washington, the rate via the Northern Pacific or Great Northern and Bellingham Bay and British Columbia Railroad, the first named carrier receives out of 40 cents 37½ cents for a haul of 2,071 miles over the Northern Pacific and 1,817 miles over the Great Northern. (See defendant's brief, 272.) When these rates and distances are compared with a haul of 1,564 miles to Jamestown, North Dakota,
211 on the Northern Pacific and 1,896 miles to Minneapolis over the same road and with substantially similar distances over the Great Northern, upon which a rate of 45 cents has been prescribed by the commission, it would appear that the 45 cent rate is a very liberal rate for the carriers.

5. From a careful examination of all the evidence I find nothing of any importance showing, or tending to show, that the complainants herein are not receiving adequate compensation for the services which they rendered the public. Any injunction against the order of the commission will operate to increase the revenue of the complainants beyond anything they have yet received upon lumber traffic. No statement is made by complainants, or any of their witnesses, that if an injunction is granted, thereby increasing the revenue of the carriers, there will be any reduction on any other commodities or any class of traffic. Nothing save opinion evidence is given upon the question of remuneration of the particular rates here under investigation. The commission prescribed 45 cents as a reasonable rate for the haul to St. Paul and Minneapolis. Measured by this standard and by the rates charged upon lumber over the lines of these complainants and of other carriers, the rates prescribed by the commission in no sense are less than the carriers are entitled to.

6. The evidence does not disclose whether the conditions and circumstances surrounding the movement of traffic from the Pacific coast to Omaha are similar or dissimilar to those appertaining to the haul from Pacific coast points to St. Paul and Minneapolis, except the elevation is much greater over the Union Pacific than over the Great Northern and Northern Pacific. (Rec., 1023.)

7. The record fails to disclose the amount of the tonnage subject to the commission's order which is hauled by complainants. It does appear that during the year ending June 30, 1907, of the whole amount of tonnage hauled by the complainants, products of
212 the forest constituted on the Union Pacific 7.86 per cent, on the Northern Pacific 37.38 per cent, on the Great Northern 14.8 per cent. How much of this percentage is carried at rates pre-

scribed by the commission does not appear. These percentages cover both State and interstate east-bound and west-bound movement. The commission's order applies only to interstate east-bound. (14 I. C. C., 16.)

8. Lumber is a low-grade commodity, is loaded and unloaded by the shipper, requires but little service, loads far beyond the average per car, and upon the whole is very desirable traffic. I find no evidence which shows or tends to show other than mere opinions of interested parties that lumber subject to the orders herein does not pay its fair proportion of the income which the complainants have or should have.

CONCLUSIONS OF LAW.

Defendant objects and accepts to the following conclusions of law made by the special master herein:

(1) For that the master erred in the 9th conclusion, page 31, wherein he stated the law as follows:

"An administrative tribunal is not as free to act within the scope of its limitations as is a legislative tribunal, because in addition to its constitutional and statutory limitations it is further limited by the spirit, intent, and purpose of its organic act and the fundamental principles underlying it and because of which it was enacted."

(2) For that the master erred in overruling each and every objection entered by defendant to the admission of evidence as shown on pages 39, 40, and 41, of volume 1, of the printed record herein.

(3) For that the master erred in holding, line 18, page 42:

" That the carriers have a right to and frequently do temporarily carry commodities at less than cost for purposes of ultimate future benefit; and because also it is sometimes necessary and requisite to compel them to carry commodities at less than cost on grounds and for reasons of public policy."

213 (4) For that the master erred in holding, line 18, page 45:

" It is not true that within the specified limits of its jurisdiction an administrative body is as untrammelled as is a legislative body. Within constitutional limitations a legislative body is absolutely beyond control and may pass bad, vicious, injudicious, and calamitous laws."

(5) For that the master erred in holding, line 1, page 47, that there does inhere in the Federal courts of equity power to review rates made by the commission to determine " whether or not the delegated power has been exercised in a just and r'asonable manner."

(6) For that the master erred in reaching the following conc'usions, paragraph 3, page 49:

" It does, however, appear that they are very low rates and unusually favorable to the shippers and to the public."

(7) For that the master erred in reaching the following conclusion, paragraph 4, page 49:

" In restoring the superseded rates to the Pembinal-Port Arthur line, including the old 50-cent rate over the Union Pacific system to

Omaha, the commission has necessarily found and determined that the 50-cent rate to Omaha and Missouri River points was and is a just and reasonable rate, and the court has a right to take them at their own opinion on this point."

(8) For that the master erred in reaching the following conclusion, paragraph 5, page 49:

"If it be true that a 50-cent rate to Omaha is a just and reasonable rate (and the commission has so found), then it must inevitably follow that the rate of 45 cents to St. Paul and 55 cents to Chicago are unjust and unreasonable rates."

(9) For that the master erred in reaching the following conclusion, paragraph 6, page 49:

"The difficulties and expenses of transportation over the Union Pacific line and the Northern lines are fairly equal. The route over the northern lines to St. Paul is longer. But St. Paul and Omaha have always been considered by the commission and by rate-making experts as on a parity as bases of rates."

214 (10) For that the master erred in reaching the following conclusion, paragraph 7, page 49:

"The rate of 10 cents to Chicago from St. Paul is conceded to be an unusually low rate, and is conceded by the commission to be just and reasonable."

(11) For that the master erred in reaching the following conclusion, paragraph 8, page 49:

"If, then, 50 cents to Omaha is just and reasonable, 45 cents to St. Paul must be grossly unjust and unreasonable, strongly tending toward confiscation of property of the northern lines, strongly tending toward unjust discrimination against the northern lines and in favor of the Union Pacific, and strongly tending to unduly prefer the territory served by the northern lines over that served by the Union Pacific, and in all these features to be a gross, arbitrary, and palpable disregard and perversion, not only of the spirit and intent of the law, but of the very terms of the law itself wherein it forbids unjust discrimination against carriers and localities and undue preferences to carriers and localities."

(12) For that the master erred in reaching the following conclusion, line 7, page 50:

"It will be said that the 45 cent rate, though confessedly less than that which is just and reasonable as found by the commission, is nevertheless not sufficiently so in its relation to the whole body of net returns, to result in confiscation. This is probably true. There is no evidence to show whether it is or not. But on the commission's own basis it is 10 per cent less than what the commission themselves have determined to be just and reasonable, and in itself is so inconsistent with and violative of the fundamental principles of rational justice, so incompatible with the commission's own expressed notions of what is just and reasonable as to manifest and evince upon its face an arbitrary violation of the spirit and intent of the law, and an arbitrary disregard of the fundamental principles of the interstate

commerce act out of which their powers grow and in accordance with which their powers must be exercised."

(13) For that the master erred in reaching the following conclusion, line 22, page 50:

"These orders further appear to be inconsistent in dealing with the differential between Omaha and Chicago and St. Paul and Chicago. Omaha and St. Paul are on a parity as bases of rates to Chicago, and yet the Union Pacific is allowed a 5 cents per one hundred pounds differential to Chicago while the northern lines are allowed 10 cents. And the 10 cent rate from St. Paul to Chicago is and always must be an exceedingly low rate because of water competition. It seems absurdly inconsistent to compel the Union Pacific road to make the haul from Omaha to Chicago for 5 cents and allow the northern lines 10 cents for the same haul, and further illustrates the inconsistency of the commission's order."

(14) For that the master erred in the following conclusion, line 16, page 52:

"Using these points as fairly illustrative of the character of the coast rates to the so-called Missouri River territory, as they fairly may be used, it is difficult to escape the conclusion, if it were the function of this court to fix a just and reasonable rate upon this traffic for the service rendered to points such as these, that rates of this character are unduly low."

(15) For that the master erred in reaching the following conclusion, line 6, page 53:

"From what has been said above, it cannot be denied that there was substantial evidence that the rates in question to Missouri River points are at least upon a low basis upon the traffic in question in these cases."

(16) For that the master erred in reaching the following conclusion, beginning last line, page 53:

"As already seen, the defendant is without power to establish rates upon any other basis and it is, therefore, the irresistible conclusion that for the distance and under the conditions involved, the preexisting scale of rates to this line was, in the opinion of the defendant, just and reasonable. The rate from Portland to Omaha seems to have been used by the defendant in reaching its conclusions as fairly illustrative and we are, therefore, furnished in these cases, by the defendant itself, with a valuable measure for determining whether its orders in disturbing rates here involved, but to points east of the Pembina–Port Arthur line, should also be supported. If we find that for equivalent or greater distances and under substantially similar conditions a similar rate was condemned and a lesser rate required, we may properly inquire for the reasons for this seeming inconsistency, and unless satisfactory reasons appear, the final inquiry is necessarily presented whether a case such as that pointed out in the decision of the Supreme Court in Interstate Commerce Commission v. Illinois Central Railroad Company et al., supra, is not presented? Stated differently the inquiry is whether the act

of the defendan*tn*, without apparent reasons, in disapproving the identical rate of 50 cents per hundred pounds for substantially the same or a greater distance, and requiring a lower rate for apparently the same character of service, is not the exercise of authority manifested in such an unreasonable manner as to be beyond the power delegated to the defendant?"

(17) For that the master erred in reaching the following conclusion, beginning line 27, page 54:

"This inquiry necessarily follows for the reason that, having prescribed a rate of 50 cents per hundred pounds as the measure of a just and reasonable rate for a given distance, it cannot be true in reason that for the same or a great distance, under similar circumstances of transportation, a substantially lower rate is at the same time just and reasonable."

(18) For that the master erred in reaching the following conclusion, beginning first line, page 55:

"In considering this branch of the case, it is to be understood that the distance from Portland to Omaha is but typical and illustrative, and that the same rate applies from many other coast points of production and to other Missouri River points of destination, resulting in a variety of combinations of distances varying within considerable limits. So, also, in conside'ing the rates to St. Paul and Minneapolis, over the lines of the Great Northern and Northern Pacific systems, the same conditions are true. The coast rates apply to St. Paul, Minneapolis, and Duluth from a variety of shipping points in the coast territory reaching to the international boundary, so that as to the rates over these lines a variety of combinations of distances may be found. From Tacoma, Washington, to Minneapolis, via the Northern Pacific lines, is substantially 1,896 miles; from Portland to St. Paul via this line, it is 2,052 miles, and as an illustration of longer hauls to St. Paul, via this line, the distance from
217 Astoria to St. Paul is 2,072 miles. Substantially similar results are obtained upon the Great Northern lines."

(19) For that the master erred in reaching the following conclusion, beginning 20th line, page 55:

"It is not therefore unfair to adopt an average of conditions, and, indeed, this seems to have been the basis upon which the defendant proceeded."

(20) For that the master erred in reaching the following conclusion, line 23, page 55:

"It will be recalled that prior to the reduction in 1893, by the Great Northern, the basis of rates on lumber and forest products to St. Paul and to Omaha from the Pacific northwest was the same. The rate to each point was then 55 cents per hundred pounds. The reasons which led to the reduction in the rate to St. Paul at that time have already been considered, and the disturbance of the equal basis of rates to these points seems to have been the result of competitive and market conditions of a special or exceptional character. It is

understood that upon many other items of traffic rates between Omaha and St. Paul on the one hand, and the coast territory on the other, have always been the same, and, indeed, in the recent decision by the defendant of the case of the City of Spokane et al. v. Northern Pacific Railway Company et al., decided June 7, 1910, 19 I. C. C., 162, rates on classes and commodities generally to Spokane territory are fixed upon the same basis from St. Paul as from Omaha. This decision involves westbound traffic, it is true, but in it the defendant used the following language, which seems to support the conclusion that in the absence of exceptional circumstances, rates applying between St. Paul and Omaha on the one hand and points in the coast territory, as well as the Spokane territory, on the other, should nominally be upon an equal basis.

Thus the commission said in the case above cited:

There is no condition of construction or operation or financial result, which would justify the Union Pacific lines in maintaining a higher rate for 1,500 miles from Omaha west toward Portland than is maintained by the Northern Pacific and Great Northern for a corresponding distance west from St. Paul toward Seattle."

218 (21) For that the master erred in reaching the following conclusion, line 21, page 56:

"While, as stated, it is true that this observation relates to westbound traffic, and perhaps is not conclusive in considering this eastbound traffic, it nevertheless is persuasive, and in the absence of anything in the record before the master indicating differences in conditions in the east-bound traffic to Omaha as compared with the east-bound traffic to St. Paul, it may be regarded in connection with the other considerations referred to as an important matter for consideration."

(22) For that the master erred in reaching the following conclusion, line 29, page 56:

"The fixing by the defendant, therefore, of rates upon an equal basis between the points under discussion, and the equal relation of rates of long standing referred to in the oral argument between these points seems to lead to the conclusion that the transportation conditions applying between these points are substantially alike."

(23) For that the master erred in reaching the following conclusion, line 22, page 57:

"As its reasons for permitting an advance east of the Pembina-Port Arthur line, the defendant said in the so-called Washington case (No. 1329):

"To certain points farther east, involving longer hauls, it is believed that there was justification for some advance in view of the less revenue per ton mile accruing to the carriers from this traffic."

(24) For that the master erred in reaching the following conclusion, line 29, page 57:

"The controlling reason, therefore, that appeared to move the defendant to permit an advance of not to exceed 5 cents per hundred pounds was the longer haul involved to points east of the Pembina-

Port Arthur line and the consequent lesser revenue per ton per mile. St. Paul, Minneapolis, and Duluth are east of the Pembina-Port Arthur line and as already shown traffic to these points from the coast territories probably involves on the average substantially longer hauls than to Omaha; certainly traffic to the Northern destinations referred to involves no lesser haul than to Omaha, and it may safely be said that the average distance between points which, under
219 the commission's orders take the 45 cent rate, is generally greater than the average distance between points where, under the commission's orders, the 50 cent rate applies."

(25) For that the master erred in reaching the following conclusion, line 11, page 58:

"The revenue per ton mile, however, accruing to the Great Northern and Northern Pacific lines, even under the 50 cent rate published by them in their tariffs of November 1, 1907, is in many important instances measurably less than the revenue per ton mile accruing upon traffic to Omaha under the 50 cent rate approved to that point. Under the 40 cent rate the revenue per ton mile on traffic from Portland to St. Paul as shown by the record was 3.90 mills and under the 50 cent rate, contained in the tariffs of November 1, 1907, it would be 4.87 mills. From Tacoma to Minneapolis, as shown by the evidence, under the 40 cent rate the revenue per ton mile was 3.98 mills, and under the 50 cent rate would be 5.27 mills. Under the 50 cent rate approved from Portland to Omaha the revenue per ton mile is 5.56 mills. These figures may be taken as fairly representative of conditions and seems to clearly demonstrate that the revenue per ton mile earned by the carriers transporting this traffic to St. Paul and common points even under the 50 cent rate would be substantially less than the revenue per ton mile accruing to carriers in the traffic to Omaha, and, therefore, if the reason given by the commission for permitting an advance in rates to points east of the Pembina-Port Arthur line seem to it to be of sufficient weight to authorize their action in that regard, it is impossible to understand why the same reasons do not compel a recognition of the 50 cent rate to St. Paul as just and reasonable."

(26) For that the master erred in reaching the following conclusion, line 4, page 59:

"Notwithstanding the apparently conclusive character of the result thus indicated by applying the measure thus furnished by the defendant for determining a just and reasonable rate for the distance and under the conditions in question it may be said to still be the duty of the court upon the whole record before it to determine whether the 50 cent rate in and of itself is in anywise unjust or unreasonable to be applied to this traffic to St. Paul and points taking the same rate."

220 (27) For that the master erred in reaching the following conclusion, line 12, page 59:

"The complainants sought to prove the issue in this regard by various methods. They called numerous witnesses of wide experience

in railroad traffic affairs, and these witnesses expressing their opinion and adding reasons therefor were agreed not only that the 40-cent rate previously in effect to St. Paul was unreasonably low, but that the entire body of rates upon this traffic to eastern points of delivery was below what they properly should be. Witnesses for the railroad companies offered in addition numerous exhibits comparing the pre-existing rates, as well as the proposed rates and earnings therefrom, with lumber rates from other sections of the country and with lumber rates applying upon their own lines. There were also numerous comparisons of the rates and earnings on other commodities with lumber based both upon earnings per ton mile and upon earnings per car. In addition to these methods of dealing with the questions involved, witnesses of experience sought to further support the position of the railroads by the making of approximate computations of the cost of handling this lumber traffic. Regarding these computations, however, it may be said that the results while instructive as showing approximate or average results are not sufficiently close to the mark to be conclusive. The evidence relating to the expense resulting from the haul of empty cars west-bound seems clearly to indicate that there is a large element of expense involved in this traffic on that account on the Northern Pacific and Great Northern lines at least. And it may be said that the opinions of the witnesses upon this branch of the proof offered tend strongly to support the judgment of the same and other witnesses that the rates in effect prior to November 1, 1907, in so far as they covered the longer hauls, produced less revenue in comparison with the probable cost involved in the traffic than reasonably might be demanded."

(28) For that the master erred in reaching the following conclusion, line 12, page 60:

"A careful consideration of all of the testimony and exhibits offered before the master in behalf of the defendant upon the question of the character of these rates has failed to disclose any substantial proof in opposition to that offered on this subject by
221 the complainants. The effect which, under the authorities must be given to the conclusions of the defendant, has led to the result, as above indicated, that this record does not present evidence so clear and convincing as to justify in the opinion of the master an injunction against the rates approved by the commission to points on and west of the Pembina–Port Arthur line, but weighing the proof applicable to the rates applying to points east of that line in connection with the conclusions reached by the defendant regarding the rates to the line and in the light of the reasons advanced by it for those conclusions, it is the finding and opinion of the master upon the entire record that the orders of the defendant adjudging the rates filed by the carriers to points east of the Pembina–Port Arthur line on November 1, 1907, to be unjust and unreasonable cannot be supported and that, indulging every reasonable inference from the proof and the necessary inferences from the findings of the defendant itself, the orders, in so far as they displace

the rates contained in the tariffs of November 1, 1907, to points east of the Pembina–Port Arthur line and in lieu thereof permit only the advance of not to exceed 5 cents per hundred pounds over the pre-existing rate, should be set aside and enjoined."

(29) For that the master erred in reaching the following conclusion, line 6, page 61:

"By the effect of the orders of the defendant finding the rates to points east of the Pembina–Port Arthur line to be unjust and unreasonable the rates contained in the tariffs of November 1, 1907, not only to St. Paul and common points, but also rates to destinations further east, were disturbed. The tariffs of November 1, 1907, fixed a rate upon lumber from the coast territory to Chicago of 60 cents. This rate was constructed by adding to the rate of 50 cents, fixed in said tariffs, to St. Paul, a rate of 10 cents per hundred pounds to cover the transportation from that point to Chicago. There is nothing in the record nor in the decisions or orders of the defendant indicating that this rate of 10 cents was complained of, and it appears from the manner in which the defendant disposed of the cases that this rate was approved as a factor in determining the rate to Chicago. This necessarily follows because, complying with the orders of the defendant and using the rate fixed by it to St. Paul of 45 cents, the carriers filed and published a rate of 55 cents to Chicago.

222 (30) For that the master erred in reaching the following conclusion, line 12, page 62:

"The distance from St. Paul to Chicago by railroad is about 410 miles; the earnings per ton mile on traffic under the rate of 10 cents in effect are approximately 5 mills. An examination of the various tables of rates contained in this record applied on numerous railroads in various parts of the country indicates that for a distance of this kind this rate is upon a reasonably low basis. It is impossible to see wherein a lower rate than this could be justified or at least required for the distance in question, and; therefore, having reached the conclusion that the orders of the defendant disapproving the rate of 50 cents published to apply on November 1, 1907, to St. Paul and common points cannot be supported it must necessarily follow that the orders of the defendant in disapproving the rate filed and published to apply on November 1, 1907, of 60 cents to Chicago must also be disapproved and should be for the same reasons enjoined. This traffic, however, is moved to Chicago and other points east and south thereof via Omaha and other points on the Missouri River in competition with the lines operating through St. Paul and Minneapolis. This 60-cent rate established in the tariffs on November 1, 1907, to Chicago applied via lines leading through Omaha and other Missouri River points. The distance from Omaha to Chicago is approximately 500 miles. It appears from the record that the carriers between Omaha and the Missouri River and Chicago on this traffic received 10 cents per hundred pounds out of the total rate to Chicago, although at times in the past in order to secure this amount the carriers west of the Missouri River have been required to allow

all or a portion of this rate out of the earnings accruing to them from the rate to Omaha. In the tariffs of November 1, 1907, the effort was made to advance the rate to Omaha to 55 cents, whereby it appears that out of the rate proposed of 60 cents to Chicago, the carriers west of Omaha would not have been compelled to have allowed the entire 10 cents out of their earnings accruing from the rate to Omaha. The question of divisions between carriers is not involved in the issues in these cases, and all that the court can consider in this regard is the question whether there is anything in the records to indicate that the addition of 10 cents to the rate of 50 cents approved by the commission to Omaha would be unjust or unreasonable
223 for the transportation of this traffic from Omaha to Chicago.

Considering all the facts relating to the character of the 10-cent rate above referred to, in its application between St. Paul and Chicago, for the distance involved and under the conditions disposed in the record, it cannot be successfully claimed that for the greater distance from Omaha to Chicago the same rate is either unjust or unreasonable. Regardless of the questions involved between the carriers in meeting competitive conditions in the rate to Chicago via Omaha, the question is presented whether the orders of the defendant in disapproving the rate of 60 cents fixed by the tariffs of November 1, 1907, to Chicago, can be sustained, and for the various reasons hereinbefore referred to it is plain that this rate, whether applied via St. Paul or via Omaha, neither was, nor is, unjust or unreasonable. If 50 cents was, as determined by the commission just and reasonable to Omaha, it is impossible to understand wherein 60 cents was unjust or unreasonable for the added distance of approximately 500 miles to Chicago."

(31) For that the master erred in reaching the following conclusion, line 6, page 64:

"There is a recognized relation between these rates to the various points of destination east of St. Paul and Omaha, and Chicago has been taken hereinabove as typical only of conditions, generally, affecting rates to all such destinations; in fact in the orders of the defendants permitting an advance not to exceed 5 cents per hundred pounds east of the Pembina-Port Arthur line the commission proceeded on the theory that the relation referred to when observed would produce a relation of rates that would be just and fair, and for this reason it is unnecessary for the court in determining the issues presented by these cases to deal with the orders of the defendant in their effect upon rates to points east of the Pembina-Port Arthur line other than as above indicated."

(32) For that the master erred in reaching the following conclusion, line 19, page 64:

"In conclusion, therefore, the master is of the opinion, and so finds, that the orders of the defendant adjudging the rates contained in the tariffs filed by the complainants, and effective November 1, 1907, to points east of the so-called Pembina-Port Arthur line, to be unjust and unreasonable cannot be approved; that the orders of

224 the defendant requiring the rates to points east of said line to be withdrawn and in lieu thereof restricting the complainants to an advance of not to exceed 5 cents per hundred pounds to said points for the same reasons cannot be supported, and the master recommends that an injunction be issued against the orders of the defendant to the extent aforesaid, and that said orders, in so far as they adjudged the rates contained in the tariff of November 1, 1907, in question, to points east of the so-called Pembina-Port Arthur line, to be unjust or unreasonable and prescribed rates lower than those contained in said tariffs to said points in lieu thereof, be set aside and annulled."

(33) For that the master erred in reaching the following conclusion, line 4, page 65:

"By the order in the so-called Potlatch case (No. 1348), which is one of the orders sought to be enjoined in these proceedings, the defendants fixed rates from points in eastern Washington, eastern Oregon, and Montana, to points east of the Pembina–Port Arthur line, which were less by fixed differentials than the rate to the same territory from points on the Pacific coast. The justness and reasonableness of these differentials are not attacked in these cases, but it follows from what has been said above that as the order of the commission fixing base rates from Pacific coast points to territory east of the Pembina–Port Arthur line must be enjoined in so far as it forbids the collection of the rates fixed to that territory by the tariffs effective November 1, 1907, the order of the commission in the Potlatch case must likewise be enjoined to the extent that by the application of the differentials fixed by that order the rates from eastern Washington, eastern Oregon, and Montana are reduced below those fixed from the same territory to points east of the Pembina–Port Arthur line by the tariffs effective November 1, 1907."

(34) For that the master erred in reaching the following conclusion, line 2, page 66:

"From the findings that the defendant's orders condemning the rates of November 1, 1907, on fir lumber to points east of the Pembina–Port Arthur line should be enjoined, it follows that those orders should be enjoined in so far as they condemn those rates and prescribe lower rates on other lumber, shingles, and other forest products to points east of that line, and it is so recommended."

225 35. Defendant objects and excepts to the proposed decree of injunction for that the same is a modification of the commission's order, while the statute does not confer upon the court power to act other than upon the order as a whole by enjoining, suspending, or sustaining the same in toto.

36. For that the master erred in recommending entries of decrees of injunction in each of the said cases in the form used in said report.

37. For that the master erred in failing to recommend decrees dismissing the bills of complainant in each of the said causes.

Wherefore, defendant, by its solicitors, respectfully prays that in all of which particulars herein set out the report be varied and altered so as to conform to the facts and the law applicable thereto.

LUTHER M. WALTER,
CHARLES C. HOUPT,
Solicitors for Defendant.

J. N. TEAL,
W. A. WIMBISH,
Of Counsel.

226 EXHIBIT B.

In the Circuit Court of the United States for the District of Minnesota, Third Division.

UNION PACIFIC RAILROAD COMPANY ET AL. *vs.* THE INTERSTATE COMMERCE COMMISSION. } In equity. No. 883.

NORTHERN PACIFIC RAILWAY COMPANY ET AL. *vs.* THE INTERSTATE COMMERCE COMMISSION. } In equity. No. 884.

GREAT NORTHERN RAILWAY COMPANY ET AL. *vs.* THE INTERSTATE COMMERCE COMMISSION. } In equity. No. 885.

Complainants' exceptions to master's report.

Come now the complainants and make the following exceptions to the report of the master, dated July 22, 1910:

I.

They except to that finding and conclusion of the master appearing on page 13 of the report as printed, reading as follows:

"It further clearly appears that during all these years these railroads have been prosperous. They have paid all the interest on their bonds and outstanding indebtedness, paid dividends upon their stock, spent vast sums of money in extensions, reproducing equipment and improvements, and in addition thereto have accumulated large surplus funds."

And to that finding and conclusion of the master appear-
227 ing on pages 23 and 24 of the printed report, reading as follows:

"During all this period, and particularly since 1897, these roads have earned satisfactory incomes. They have paid all interest on their bonds and indebtedness, all operating expenses, fairly satisfactory dividends on their stock, vast sums in improvements and extensions, and have accumulated handsome surpluses, and clearly

appear to have been on the whole prosperous, and to have earned fairly satisfactory net incomes from their transportation."

upon the ground that it appears from the testimony that the earnings of the Northern Pacific Railway Company and of the Great Northern Railway Company during the periods referred to in said findings have not yielded a fair return upon the fair value of the property of said companies devoted to railroad uses. The evidence further shows that the properties of the Northern Pacific Company were in an insolvent condition and in the hands of receivers during a portion of the time down to the year 1896, and that the properties of the Union Pacific system were likewise insolvent and in receivers' hands during a portion of the time down to the year 1898.

The evidence showing the cost of reproduction of the Great Northern railroad system contained in complainants' Exhibit 15, Hogeland, page 435, printed transcript of record; the evidence showing the value of the Great Northern system computed upon average market price of stocks and bonds for the period of five years ended June 30, 1908, introduced in evidence under stipulation and printed in complainants' reply brief, page 51, and complainants' Exhibit A, Great Northern, at pages 653 to 664, inclusive, of printed transcript of record, showing gross earnings, operating expenses, taxes, net earnings, and net income from operation show that the net earnings upon the fair value of the properties of that company for the years 1904 to 1908, both inclusive, to have been less than a fair return upon the value of such properties.

228 The findings of the cost of reproduction of the Northern Pacific Railway Company, appearing in complainants' Exhibit 4, pages 116 to 135 of record, and the findings of the value of the property computed upon the basis of the average market value of bonds and stocks of said company for a period of five years, introduced in evidence by stipulation and printed on page 52 of complainants' reply brief, and the findings as to the earnings of said property during the entire period from its reorganization in 1896 down to and including the fiscal year 1909, appearing in complainants' Exhibit 22, page 595, of printed transcript of record, showing that the earnings from said property during the said period had not yielded a fair return upon the fair value thereof.

II.

They except to that finding and conclusion of the master, appearing on page 14 of the printed copy of the report, reading as follows:

"The evidence consists, as before stated, merely of estimates made by experts in the employ of the complainants. In the opinion of the master it is so remote and speculative as bearing upon a particular rate as to be immaterial and it would serve no useful purpose to attempt to make a finding as to what it would cost under the circumstances and conditions indicated in the estimate to reproduce the roads in question. The master's opinion would be merely a guess

and no better than the guess of the court, and inasmuch as it is conceded and admitted by the complainants that the real and true value of the roads are never considered in the making of rates and have nothing to do with them we think this evidence so remote and speculative as to be absolutely immaterial in this case."

And further except to paragraps 5 and 6 of the conclusions of law upon page 30 of the printed copy of the report reading as follows:

"(5) But where the question under consideration is the just-
229 ness and reasonableness of a single rate on a single commodity, because it is impossible to determine the value of that portion of the properties involved in and devoted to the traffic in a particular commodity, the value of the properties as a whole bears so remotely on the proposition as to be immaterial and irrelevant.

"(6) And the reproductive value being only a collateral fact offered to influence the court's conclusion as to the ultimate fact of real value is too remote and speculative to be material or relevant to the question of the justness and reasonableness of a single rate."

for the reason that the master erred as a matter of law in holding that the evidence of the cost of reproduction of the Northern Pacific and Great Northern systems is so remote and speculative as bearing upon the particular rate as to be immaterial. The master erred in holding that upon the evidence thus introduced a finding based thereon would be merely a guess. The master erred in holding that the cost of reproduction of said properties was so remote and speculative as to be immaterial in determining the ultimate fact of the real value of said properties.

III.

They except to that finding and conclusion of the master, appearing on page 21 of the printed copy of the report, reading as follows:

"Ever since 1903 the condition in respect to the predominance of empty car mileage has been changing until in 1907 the west-bound empty car movement greatly predominated over the east-bound empty car movement. This result was not wholly due to the increase in the lumber traffic, but in part to the very great increase in the volume of other important commodities shipped from the West to the consuming markets of the East."

for the reason that, as shown in Great Northern Exhibit 27, page 613, and Maguire Exhibit 3, page 1485, and in Northern Pacific Exhibit 25, at page 604, all in the printed transcript of record,
230 it appears that almost the entire volume of east-bound tonnage consisted of lumber and shingles during the year 1907.

IV.

They except to those findings and conclusions of the master, appearing on page 30 of the printed copy of the report, reading as follows:

"(2) The Constitution guarantees just compensation for private property devoted to a public use, and under this guaranty a carrier is entitled to charge rates which are justly compensatory for the services rendered. But inasmuch as it is his entire property which is devoted to the public use he is only entitled to just compensation for the entire use, and a particular rate need not in and of itself furnish just compensation for the particular service rendered, so long as it does not so affect the general body of net returns as to reduce them below what is just and reasonable.

"(3) Unless it appears that a single rate so affects the general body of net returns as to reduce them (the net returns) below what is just and reasonable, confiscation can not be predicated upon it."

and to those findings and conclusions of the master, appearing on pages 42 and 43 of the printed copy of the report, reading as follows:

"In other words, confiscation can not be predicated upon a single rate in and of itself, particularly because it is impossible to ascertain the true facts in reference thereto, but can only be predicated upon a single rate as it relates to and affects the general body of net returns. So that in inquiring as to the justness and reasonableness of a particular rate this constitutional question need not be considered any further than the relation of the rate to and effect upon the general business of the carrier and its entire body of net returns."

And to that finding and conclusion of the master, appearing on page 44 of the printed copy of the report, reading as follows:

"It seems clear, therefore, that in cases involving a single rate, such as are the cases at bar, unless it is clearly shown
231 that the relation and effect of the single rate to and upon the general body of net returns is such as to reduce the general net returns to less than that which is just and reasonable, no case of confiscation has been made out."

upon the ground that the master erred as a matter of law in finding and holding that a carrier is only entitled, under the Constitution and the act to regulate commerce, to just compensation for the entire use of all its property, and that a particular rate need not in and of itself furnish just compensation for the particular service rendered; and further erred, as a matter of law, in holding that confiscation under the provisions of the Constitution can not be predicated upon a single rate unless the reduction in that rate so affects the general body of net returns as to reduce the net returns as a whole below what is just and reasonable, for the reason that under the provisions of the Constitution and the limitations of power upon the Interstate Commerce Commission, as contained in the act to regulate commerce, the commission is without power to establish any rate or rates for transportation of property in interstate commerce that will not admit of the carrier earning such compensation for the service rendered as under all the circumstances relating to that service is just and reasonable.

V.

They except to that finding and conclusion, appearing on page 44 of the printed copy of the report, reading as follows:

"The carriers concede that they are unable to determine the cost of this traffic in and of itself, and that they are unable to say with any satisfactory accuracy whether or not they make a profit upon it, but they have all conceded that in their judgment, speaking as experts, the lumber traffic has not been confiscatory and has not been performed for less than cost."

232 And to that finding and conclusion, appearing on page 49 of the printed copy of the report, reading as follows:

"There is not evidence in the record from which it clearly and persuasively appears that the rates established by the orders here in controversy are confiscations."

for the reason that complainants have not conceded that the rates on lumber fixed by the orders of the commission involved herein were not confiscatory, and for the further reason that there is ample evidence in the record from which it clearly and persuasively appears that the rates fixed by the orders of the commission in controversy here are confiscatory. The evidence of the witness, James J. Hill, at pages 1267, 1276, 1278, 1280, 1288, 1294, and 1298 in the printed transcript of the record; the evidence of the witness, Howard Elliott, at pages 1372 to 1374, inclusive, therein; the evidence of the witness, J. G. Woodworth, at pages 3883 to 3891, inclusive, therein; the evidence of the witness, James A. Munroe, at page 306 and at pages 352, 364, 365; the evidence of the witness, J. G. Woodworth, at page 1475; the evidence of Dwight C. Morgan, at pages 800, 863; Woodworth Exhibit 1, page 1443; Woodworth Exhibit 2, page 1447; Maguire Exhibit 3, page 1485; R. B. Miller Exhibit 2, page 1500; Miller's statement, page 1512; Union Pacific statement, page 353; evidence of the witness, R. I. Farrington, page 1602 and following, and evidence of witness, James J. Hill, page 1280, clearly shows that the rates fixed by the orders of the commission complained of herein are confiscatory.

VI.

The complainants further except to the finding and conclusion of the master denying the prayer for an injunction against the orders of the commission disapproving the rates filed by the carriers in their tariffs of November 1, 1907, to points on and west of the so-

233 called Pembina-Port Arthur line and in lieu thereof requiring the restoration of the rates previously in effect to points on and west of said line for the reason in exception number V that the evidence conclusively shows that the rates established by the carriers in the tariffs of November 1, 1907, to points on and west of said Pembina-Port Arthur line were neither unjust nor unreasonable, and conclusively shows that the rates ordered restored by the orders herein complained of were and are unjust, unreasonable, and confiscatory.

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The complainants therefore pray that the report in the matters hereinbefore excepted to be modified and made to conform to the law and the proof contained in the record.

HALE HOLDEN,
F. C. DILLARD,
H. A. SCANDRETT, and
CHARLES DONNELLY,
Solicitors for Complainants.

Filed August 27th, 1910. Henry D. Lang, clerk.

234 Thereafter and on September 15th, 1910, the following record of hearing upon exceptions to master's report was entered of record in said cause, to wit:

235 United States Circuit Court for the District of Minnesota, Third Division.

Term minutes. June term, A. D. 1910. September 15, 1910.

Thursday morning: Court opened pursuant to adjournment. Present: Hon. Walter H. Sanborn, Hon. Willis Van Devanter, Hon. William C. Hook, circuit judges; Henry D. Lang, clerk.

UNION PACIFIC RY. CO., OREGON SHORT LINE R. R. Co., Oregon R. R. & Navigation Co., Southern Pacific Co., Northern Pacific Ry. Co., Great Northern Ry. Co., Chicago, Burlington & Quincy R. R. Co., and Oregon & California R. R. Co., complainants, *vs.* THE INTERSTATE COMMERCE COMMISSION, defendant.	No. 883. Equity.
NORTHERN PACIFIC RY. CO., GREAT NORTHERN Ry. Co., Chicago, Burlington & Quincy R. R. Co., Union Pacific R. R. Co., Oregon Short Line R. R. Co., and Oregon R. R. & Navigation Co., complainants, *vs.* THE INTERSTATE COMMERCE COMMISSION, defendant.	No. 884. Equity.
GREAT NORTHERN RY. CO., NORTHERN PACIFIC Ry. Co., Chicago, Burlington & Quincy R. R. Co., Union Pacific R. R. Co., Oregon Short Line R. R. Co., Oregon R. R. & Navigation Co., complainants, *vs.* THE INTERSTATE COMMERCE COMMISSION, defendant.	No. 885. Equity.

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This day came the parties to these causes by their respective solicitors, Mr. Hale Holden appearing on behalf of the complainants and Messrs. Luther M. Walter, J. N. Teal, and W. A. Wimbish appearing on behalf of the defendant, and the said causes having been heretofore by order duly made and entered set down
236 for hearing at this time and place, upon the exceptions of the complainants and defendant to the special master in chancery's report herein, the same now coming on.

Mr. Hale Holden opens and argues the said exceptions on behalf of the complainants.

Mr. Luther M. Walter opens, states, and argues the exceptions on behalf of the defendant.

And here the court takes a recess until two o'clock p. m.

The court resumes proceedings at two o'clock p. m.

Mr. Luther M. Walter resumes and concludes his argument upon said exceptions on behalf of the defendant.

Mr. W. A. Wimbish argues upon the said exceptions on behalf of the defendant.

Mr. J. N. Teal argues in conclusion upon said exceptions on behalf of the defendant.

Mr. Hale Holden argues in reply and conclusion upon said exceptions on behalf of the complainants.

And after hearing the arguments and statements of the solicitors for the respective parties hereto upon said exceptions to the special master's report, the same are duly submitted to and by the court taken under advisement.

Ordered, That this court do now adjourn until to-morrow morning at ten o'clock.

A true record,

Attest:

HENRY D. LANG, *Clerk.*

237 Thereafter, and on October 1st, 1910, the following order, fixing the compensation of the special master, was filed and entered in said cause, to wit:

238 United States Circuit Court, District of Minnesota, Third Division.

Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad & Navigation Company, Southern Pacific Company, Northern Pacific Railroad Company, Great Northern Railroad Company, Chicago, Burlington & Quincy Railroad Company, and Oregon California Railroad Company, complainants, *vs.* Interstate Commerce Commission, defendant.	No. 883.
Northern Pacific Railway Company, Great Northern Railway Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad & Navigation Company, complainants, *vs.* Interstate Commerce Commission, defendant.	No. 884.
Great Northern Railway Company, Northern Pacific Railway Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad & Navigation Company, and Southern Pacific Company, complainants, *vs.* Interstate Commerce Commission, defendant.	No. 885.

239 By orders of this court made one in each of the above entitled causes, on the 13th day of February, 1909, Frederick M. Dickson, of St. Paul, Minnesota, was appointed special master in chancery in each of said causes, and empowered and directed to take and report to the court the evidence therein; to examine the same; to make all necessary computations; to find and state the facts in said causes, and to report advisory conclusions of law and recommend a proper form of decree herein:

And the said master having heard said causes, the same having been tried before him together, and having, on the 22nd day of July, 1910, served upon the respective parties to said causes a preliminary report of his conclusions and recommendations therein, and having, on the 19th day of August, 1910, heard and considered the exceptions of the respective parties to said causes to said report and recom-

mendations, and having thereafter, on the 27th day of August, 1910, filed his final report of said causes and recommendations therein;

Now, upon consideration, it is ordered, That the compensation of said special master for his services in said three causes (including $200.00 expense sustained by him) be, and it is hereby, fixed and allowed at the sum of four thousand $4,000.00) dollars, to be distributed pro rata between said causes.

Dated this 28th day of September, 1910.

WALTER H. SANBORN, *Circuit Judge.*

(Endorsed:) Order fixing master's compensation. Filed Oct. 1, 1910. Henry D. Lang, clerk. (Entered, T. M., vol., 42, page 153–4.)

240 Thereafter and on the same day the following exceptions of defendant to master's report were filed in said cause, to wit:

241 In the Circuit Court of the United States for the District of Minnesota, Third Division.

UNION PACIFIC RAILROAD COMPANY, OREGON SHORT Line Railroad Company, Oregon Railroad & Navigation Company, Southern Pacific Railway Company, Northern Pacific Railway Company, Great Southern Railway Company, Chicago, Burlington & Quincy Railroad Company, and Oregon California Railroad Company, complainants, *vs.* INTERSTATE COMMERCE COMMISSION, DEFENDANT.	No. 883.
NORTHERN PACIFIC RAILWAY COMPANY, GREAT Northern Railway Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad & Navigation Company, complainants, *vs.* INTERSTATE COMMERCE COMMISSION, DEFENDANT.	No. 884.
GREAT NORTHERN RAILWAY COMPANY, NORTHERN Pacific Railway Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad & Navigation Company, and Southern Pacific Company, complainants, *vs.* INTERSTATE COMMERCE COMMISSION, DEFENDANT.	No. 885.

Exceptions of defendant to master's final report.

Charles C. Houpt, United States attorney; Luther M. Walter, special assistant United States attorney.

J. N. Teal, W. A. Wimbish, of counsel.

Now comes defendant, Interstate Commerce Commission, by its solicitors, and excepts to the final report of the special master filed herein on the 27th day of August, 1910, upon each and every ground set out in the objections and exceptions of this defendant filed with the master on the 17th day of August, 1910, set out in Exhibit
242 A accompanying the printed report of the master at pages 73 and 96, both inclusive.

In further support of said exceptions so presented to and filed with the master, thos defendant respectfully submits the following:

(a) Referring to exception No. 3 (pp. 74, 75 of the master's report), the master should have found and declared that the 40-cent rate to St. Paul was established by the Great Northern Railway Company, upon its completion to the coast in 1893, for the purpose of securing traffic and because it was believed and declared by the officials of the said railway company that this rate was reasonable and just and would afford the carrier fair remuneration for the services rendered; and the fact that there was or probably would be an empty east-bound movement of cars was not considered or offered as a reason for making the rate. (Trans., pp. 1274–75.)

The master should have further found that the Northern Pacific Railway Company joined in this rate because it was forced to do so by competition, and not because of the existence of an east-bound empty car movement.

(b) Referring to exception No. 14 (p. 77 of the master's report), the master should have found and declared that while the rate per ten mile for the haul of lumber from coast points to Omaha, under the 50-cent rate, was less than the average rate per ten mile on all traffic of the complainant roads, it afforded full compensation for the service performed, and was not out of line with the rates upon other traffic, in view of the length of haul, the volume of the movement, and the character of the commodity.

(c) Referring to exception 15 (p. 77 of the master's report), the master should have found and declared that Omaha and St. Paul are not on a party as bases for the rates for the haul of lumber
243 from Pacific coast points; that many years ago the carriers established a differential of 20 cents a hundred pounds as between Omaha and St. Paul because of the greater market competition at St. Paul, which was then the center of a large lumber-producing region; that as this competition relaxed the differential was decreased, until under the tariffs of November 1, 1907, it was made 5 cents a hundred pounds; that the Interstate Commerce Commission in its report and order did not disturb, but recognized and retained this differential in the rates prescribed; and that the difference in market competition existing at St. Paul justified the carriers in fixing the differential of 5 cents under Omaha.

The defendant prays that the said exceptions be sustained by the court; that the findings and conclusions of the masters excepted to be reversed; and that the original and amended bills of the complainants in said causes be dismissed.

CHARLES C. HOUPT,
United States Attorney.
JOEL M. DICKEY,
Assistant United States Attorney.

(Endorsed:) Defendant's exceptions to master's report. Filed October 1st, 1910. Henry D. Lang, clerk.

244 Thereafter and on October 10th, 1910, the following decision overruling exceptions and directing decrees to be entered was filed in said cause, to wit:

245 United States Circuit Court, District of Minnesota, Third Division.

UNION PACIFIC RAILROAD COMPANY; OREGON Short Line Railroad Co.; Oregon Railroad and Navigation Co.; Southern Pacific Co.; Northern Pacific Railway Co.; Great Northern Railway Co.; Chicago, Burlington & Quincy Railroad Co.; and Oregon and California Railroad Company, complainants, *vs.* INTERSTATE COMMERCE COMMISSION, DEFENDANT.	No. 883. Equity.
NORTHERN PACIFIC RAILWAY CO.; GREAT NORTHern Railway Company; Chicago, Burlington & Quincy Railroad Co.; Union Pacific Railroad Co.; Oregon Short Line Railroad Co.; and Oregon Railroad and Navigation Company, complainants, *vs.* INTERSTATE COMMERCE COMMISSION, DEFENDANT.	No. 884. Equity.
GREAT NORTHERN RAILWAY CO.; NORTHERN PAcific Railway Co.; Chicago, Burlington & Quincy Railroad Co.; Union Pacific Railroad Co.; Oregon Short Line Railroad Co.; Oregon Railroad and Navigation Co.; and Southern Pacific Co., complainants, *vs.* INTERSTATE COMMERCE COMMISSION, DEFENDANT.	No. 885. Equity.

All the exceptions to the report of the master must be overruled. Those which challenge his finding that the reduction by the Interstate Commerce Commission on the fifty cent rate on lumber to St. Paul

and other points east of the Pembina Line was arbitrary, so palpably unjust and unreasonable and so discriminatory that it was beyond the power of the commission, are overruled on the ground that this action of the commission was beyond its power or so paypably and gravely unjust and unreasonable as to be beyond the substance if not beyond the form of its power, and upon the authority of Interstate Commerce Com. vs. Ill. Cent. R. R. Co. (30 Sup. Ct. Te., 155); C., M. & St. P. Ry. Co. vs. Minnesota (134 U. S., 418–452–456–457);
246 Mo., Kansas Texas R. R. Co. et al., vs. I. C. C. (164 Fed., 645); F. H. Peavey & Co. vs. U. P. Ry. Co. (176 Fed., 409–418–422).

Let orders therefore be entered overruling the exceptions to the special master's report and let the proposed decrees be entered.

(Endorsed:) Decision overruling exceptions and directing decrees to be entered. Filed Oct. 10, 1910. Henry D. Lang, clerk.

Thereafter and on October 11th, 1910, the following order overruling exceptions to master's report was filed and entered in said cause, to wit:

247 United States Circuit Court for the District of Minnesota, Third Division.

Northern Pacific Railway Company, Great Northern Railway Company, Chicago, Burlington and Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad and Navigation Company, *vs.* Interstate Commerce Commission.	Equity. No. 884.

Whereas an order was duly entered herein on the 30th day of July, A. D. 1910, setting the exceptions of the complainants and defendant to the report of the special master in chancery, and the form of decree recommended and proposed by him, which said report and proposed decree were duly filed herein on the 27th day of August, A. D. 1910, down for hearing on the 15th day of September, A. D. 1910, and the same having been on that day heard, argued, and submitted to and by the court taken under advisement.

Now, after due consideration thereof, it is by the court ordered, adjudged, and decreed, That all of the exceptions of the complainants and defendant and of each of them be, and they hereby are, overruled. And it is further ordered, That the report of the special master in chancery as filed herein be, and the same hereby is, in all things approved and confirmed and that the decree recommended by the

said special master be, and the same hereby is, approved, and accordingly that the same be entered.

WALTER H. SANBORN,
WILLIS VAN DEVANTER,
WILLIAM C. HOOK,
U. S. Circuit Judges.

(Endorsed:) Order overruling exceptions to special master's report. Filed Oct. 11, 1910. Henry D. Lang, clerk.

248 Thereafter and on October 13th, 1910, the following decree was filed and entered in said cause, to wit:

249 In the Circuit Court of the United States for the District of Minnesota, Third Division.

NORTHERN PACIFIC RAILWAY COMPANY, GREAT NORTHERN Railway Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad & Navigation Company, complainants,

vs.

INTERSTATE COMMERCE COMMISSION, DEFENDANT.

No. 884.

This cause came on to be heard at this term and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows:

That the order of the defendant in the two proceedings brought before it entitled Pacific Coast Lumber Manufacturers' Association v. Northern Pacific Railway Company et al., being I. C. C. No. 1329; and Southwest Washington Lumber Manufacturers' Association v. Northern Pacific Railway Company et al., being I. C. C. No. 1335, dated June 2, 1908, as amended July 27, 1908, and as further amended September 1, 1908, and as further amended September 25, 1908; and the order of the defendant in that proceeding brought before it entitled Pacific Coast Lumber Manufacturers' Association v. Northern Pacific Railway Company et al., being I. C. C. No. 1054, dated June 1, 1908, as amended June 27, 1908, and as further amended September 1, 1908; and the order of the defendant in that proceeding brought before it entitled Western Oregon Manufacturers' Association et al. v. Southern Pacific Company et al., being I. C. C. No. 1331, dated June 1, 1908; and the order of the defendant in that proceeding brought before it entitled Potlatch Lumber Company et al.
250 v. Northern Pacific Railway Company et al., being I. C. C. No. 1348, dated June 2, 1908, as amended July 27, 1908, in so far as said orders, or any of them, require the complainants herein to cease and desist from enforcing the rates prescribed by complainants' tariff effective November 1, 1907, and to prescribe lower rates than

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those prescribed by said tariff from points in Washington, Oregon, Idaho, and Montana to points each of the line drawn from Pembina, North Dakota, southward through Grand Forks, North Dakota; Moorhead and Breckenridge, Minnesota; Sioux City and Council Bluffs, Iowa; St. Joseph and Kansas City, Missouri; and thence to Port Arthur, Texas, along the Kansas City Southern Railway *vs*, and each of them hereby is, set aside and annulled, and the defendant and its members, their agents, servants, and representatives, are hereby perpetually enjoined and restrained from enforcing any of said orders in so far as they affect rates to points east of said lines.

WALTER H. SANBORN,
WILLIS VAN DEVANTER,
WILLIAM C. HOOK,
U. S. Circuit Judges.

(Endorsed:) Decree. Filed October 13th, 1910. Henry D. Lang, clerk.

Thereafter and on October 17th, 1910, the following stipulation for taxation of costs was filed and entered in said cause, to wit:

251 In the Circuit Court of the United States for the District of Minnesota, Third Division.

UNION PACIFIC RAILROAD COMPANY, OREGON SHORT Line Railroad Company, Oregon Railroad & Navigation Company, Southern Pacific Railway Company, Northern Pacific Railway Company, Great Northern Railway Company, Chicago, Burlington & Quincy Railroad Company, and Oregon and California Railroad Company, complainants, *vs.* INTERSTATE COMMERCE COMMISSION, DEFENDANT.	No. 883.
NORTHERN PACIFIC RAILWAY COMPANY, GREAT Northern Railway Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad & Navigation Company, complainants, *vs.* INTERSTATE COMMERCE COMMISSION.	No. 884.
GREAT NORTHERN RAILWAY COMPANY, NORTHERN Pacific Railway Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad & Navigation Company, and Southern Pacific Company, complainants, *vs.* INTERSTATE COMMERCE COMMISSION, DEFENDANT.	No. 885.

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Stipulation.

It is stipulated that the following items of disbursements made by the complainants in the above-entitled causes were disbursements necessarily made therein, and that they may be taxed as costs in favor of said complainants, the amounts named below to be apportioned pro rata between said causes, or, in other words, one-third to each cause:

252	1908.		
	Dec. 17.	Paid Henry D. Lang, clerk U. S. Circuit Court, Saint Paul, for serving chancery subpœna	$3.00
	1909.		
	Nov. 6.	Paid Robt. S. Taylor, Saint Paul, for record of testimony and proceedings	1,413.00
	Jan. 18.	Paid Henry D. Lang, clerk U. S. Circuit Court, Saint Paul, for additional deposit	10.00
	1910.		
	April 15.	Paid Gunthrop-Warren Printing Company for printing record	2,948.00
	Mar. 1.	Paid Henry D. Lang, clerk U. S. Circuit Court, Saint Paul, for additional deposit	30.00
	Aug. 6.	Paid Review Publishing Company, Saint Paul, for printing master's report	50.25
	Sept. 3.	Paid Gunthrop-Warren Printing Company for reprint of master's report, with exceptions and rulings thereon	94.50
	Oct. 7.	Paid Frederick N. Dickson, special master, compensation for his services as per agreement of parties and order of court	4,000.00
		Total	8,548.75
		To fees of H. Lee, crier, Chicago, 8 days, at $2.50 per day, as per stipulation filed Mar. 11, 1910	20.00
			8,568.76

F. C. Dillard,
Hale Holden,
Chas. Donnelly,
Solicitors for Complainants.
Luther M. Walter,
Solicitor for Defendant.

To amount brought forward	$8,568.75
Deduct therefrom deposits for costs	40.00
	8,628.75
One-third thereof under the stipulation apportioned to this case	2,842.92
To clerk's fees in this cause	27.50
To making chancery final record	101.55
	2,971.97

Cost taxed at $2,971.97, this 17th day of October, A. D. 1910.
Henry D. Lang, *Clerk.*

(Endorsed:) Stipulation for taxation of costs. Filed October 17th, 1910. Henry D. Lang, clerk.

253 Thereafter and on the same day the following judgment for costs were entered in said cause, to wit:

254 United States Circuit Court for the District of Minnesota, Third Division.

Term minutes. June term, A. D. 1910. October 17th, 1910.

Monday morning. Court opened pursuant to adjournment.
Present: Hon. Walter H. Sanborn, circuit judge; Hon Charles A. Willard, judge; Henry D. Lang, clerk.

Northern Pacific Railway Company, Great Northern Railway Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad and Navigation Company, *vs.* Interstate Commerce Commission.	Equity. No. 884.

In accordance with the final decree entered herein on the 13th day of October, 1910, and the stipulation of the solicitors for the respective parties hereto this day filed herein, it is by the court ordered, adjudged, and decreed, that the Northern Pacific Railway Company, Great Northern Railway Company, Chicago, Burlington and Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad and Navigation Company, the complainants herein, do have and recover of and from the Interstate Commerce Commission, the defendant herein, their costs and disbursements in this action this day taxed and allowed at the sum of two thousand nine hundred seventy-one dollars and ninety-seven cents ($2,971.97), and that they have execution therefrom.

A true record.
Attest: Henry D. Lang, *Clerk*.

255 Thereafter and on October 17th, 1910, the following appeal papers were filed and entered of record in said cause, to wit:
Assignment of errors and prayer for reversal.
Petition for appeal.
Order allowing appeal.
Præcipe for return to U. S. Supreme Court.
Original citation and proof of service thereof.

256 In the Circuit Court of the United States for the District of Minnesota.

NORTHERN PACIFIC RAILWAY COMPANY ET AL., complainants,
vs.
INTERSTATE COMMERCE COMMISSION, DEFENDANT. } No. 884.

Assignment of errors.

Now comes the Interstate Commerce Commission, by the Honorable Charles C. Houpt, United States attorney for the district of Minnesota, and Luther M. Walter, special assistant to the United States attorney, and charges that in the order and decree rendered by said circuit court for said district in the above entitled cause, on the tenth day of October, 1910, wherein and whereby said court suspended the order of the Interstate Commerce Commission, as therein shown, and restrained and enjoined the enforcement of the same, and in the record and proceedings therein there is manifest error to its injury, in this, to wit:

1. Said circuit court erred in not dismissing the bill and amended bill of complaint for want of equity.

2. Said circuit court erred in not dismissing complainants' bill and amended bill for want of jurisdiction.

3. Said circuit court erred in holding that the said order of the commission was erroneous and unlawful and beyond the power of the commission to make.

4. Said circuit court erred in ordering that said order of the commission be suspended, set aside, and held for naught and its attorneys, agents, and employes be restrained and enjoined from enforcing the same.

5. Said circuit court erred in suspending, annulling, and holding void said orders of the said commission.

Wherefore the Interstate Commerce Commission prays that the decree of said circuit court rendered on the tenth day of Octo-
257 ber, 1910, be reversed, and that said circuit court be ordered to enter a decree dismissing the amended petition or bill of complaint in the above entitled cause by said complaint against said Interstate Commerce Commission.

CHAS. O. HOUPT,
United States Attorney.
LUTHER M. WALTER,
Special Assistant to the United States Attorney.

(Endorsed:) Assignment of error and prayer for reversal. Filed October 17, 1910. Henry D. Lang, clerk.

258 In the Circuit Court of United States for the District of Minnesota.

NORTHERN PACIFIC RAILWAY COMPANY ET AL., complainants, *vs.* INTERSTATE COMMERCE COMMISSION, defendant. } No. 884.

Petition for appeal.

The Interstate Commerce Commission, by Honorable Charles C. Houpt, United States attorney for the district of Minnesota, and Luther M. Walter, special assistant to the said United States attorney, being thereunto duly authorized, represents that in the decree or order of said Circuit Court in the above stated case, rendered on the tenth day of October, 1910, there is manifest error to its injury, and therefore prays for an order granting appeal from said decree to the Supreme Court of the United States.

CHAS. C. HOUPT,
United States Attorney.
LUTHER M. WALTER,
Special Asst. to the United States Attorney.

(Endorsed:) Petition for appeal. Filed October 17, 1910. Henry D. Lang, clerk.

259 In the Circuit Court of the United States for the District of Minnesota.

NORTHERN PACIFIC RAILWAY COMPANY ET AL., complainants, *vs.* INTERSTATE COMMERCE COMMISSION, defendant. } No. 884.

Order allowing appeal.

In this cause the Interstate Commerce Commission, by the Honorable Charles C. Houpt, United States attorney for the district of Minnesota, and Luther M. Walter, special assistant to the said United States attorney, thereunto duly authorized, having made its application in writing for an appeal from the decree therein, rendered on the tenth day of October, 1910, to the Supreme Court of the United States, and it appearing that the matter in dispute in said cause exceeds the sum of $2,000.00, exclusive of costs, it is therefore ordered that said appeal be, and the same is hereby, granted and made returnable on the 11th day of November, 1910.

WALTER H. SANBORN,
Circuit Judge.

(Endorsed:) Order allowing appeal. Filed October 17th, 1910. Henry D. Lang, clerk.

260 Circuit Court of the United States, District of Minnesota, Third Division.

NORTHERN PACIFIC RAILWAY COMPANY ET AL., complainants, *vs.* INTERSTATE COMMERCE COMMISSION, DEFENDANT.	No. 884.

To the clerk of the above-named court:

Please make a return upon the appeal to the United States Supreme Court and include therein all the files and records in this cause.

Dated St. Paul, Minnesota. Charles C. Houpt.

CHAS. C. HOUPT, *U. S. Atty.*,
LUTHER M. WALTER, *Atty.*,
Complainants' Solicitors.

(Endorsed:) Præcipe for return. Filed October 17, 1910. Henry D. Lang, clerk.

261 United States of America, Circuit Court, Eighth Circuit.

Citation.

United States of America to Northern Pacific Railway Company et al, Greeting:

You are hereby cited and admonished to be and appear in the United States Supreme Court, at the Capitol, in the city of Washington, D. C., thirty days from and after the date this citation bears date, pursuant to an appeal filed in the clerk's office of the U. S. Circuit Court for the district of Minnesota, third division, wherein the Interstate Commerce Commission is appellant and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant as in said petition mentioned should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the Honorable Walter H. Sanborn, judge of said court, this 17th day of October, A. D. 1910.

WALTER H. SANBORN,
Judge of Said Court.

Due service of the foregoing citation by copy at St. Paul, Minnesota, is hereby admitted this 17th day of October, A. D. 1910.

F. C. DILLARD,
HALE HALDEN,
CHARLES DONNELLY,
Solicitors for Appellees.

(Indorsed:) Entered, 884 Eq., No. 884, equity. United States Circuit Court, District of Minnesota, 3d division. Northern Pacific Railway Co. vs. The Interstate Commerce Commission, defendant. Citation. Filed Oct. 17, 1910. Henry D. Lang, clerk.

263 And thereafter and on the same day the following stipulation as to record on appeal was filed in said cause, to wit:

264 In the Circuit Court of the United States for the District of Minnesota.

NORTHERN PACIFIC RAILWAY COMPANY ET AL., complainant, *vs.* THE INTERSTATE COMMERCE COMMISSION, defendant.	No. 884. Equity.
GREAT NORTHERN RAILWAY COMPANY, complainant, *vs.* THE INTERSTATE COMMERCE COMMISSION, defendant.	No. 885. Equity.

It is stipulated and agreed by and between the parties hereto that the clerk of this court, in preparing the records for transmission to the Supreme Court of the United States, shall not include the record in each of these two cases, it being in each case a duplicate of that being set forward in the case of the Union Pacific Railway Company et al. versus the Interstate Commerce Commission, No. 883. The Supreme Court in passing upon the appeal in each of the said cases may use the record in number 883 as the record in all three of said cases.

F. C. DILLARD,
Solicitor for Complainant.
HALE HOLDEN,
Solicitor for Complainant.
CHARLES DONNELLY,
Solicitor for Complainant.
CHARLES C. HOUPT,
Solicitor for Defendant.
LUTHER M. WALTER,
Solicitor for Defendant.

(Endorsed:) Stipulation as to record upon appeal. Filed October 17, 1910. Henry D. Lang, clerk.

265 United States of America, Circuit Court of the United States, District of Minnesota, Third Division.

I, Henry D. Lang, clerk of said Circuit Court, do hereby certify and return to the honorable the Supreme Court of the United States, that the foregoing, consisting of 265 pages, numbered consecutively from 1 to 265, inclusive, is a true and complete transcript of the records, process, pleadings, orders, final decree, and all other pro-

ceedings in said cause except the original bill of complaint and the exhibits filed by the complainants, and of the whole thereof, as appears from the original records and files of said court; and I do further certify and return that I have annexed to said transcript and included within said paging the original citation, together with the proof of service thereof.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Saint Paul, in the District of Minnesota, this 28th day of October, A. D. 1910.

[SEAL.]

HENRY D. LANG, *Clerk.*
By LOUISE B. TROTT, *Deputy.*

Office of the clerk, Supreme Court U. S. Received Oct. 31, 1910.

(Indorsement on cover:) File No. 22424, Minnesota, C. C. U. S. Term No. 452. The Interstate Commerce Commission, appellant, vs. Northern Pacific Railway Company et al. Filed November 30th, 1910. File No. 22424.

○

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 453.

THE INTERSTATE COMMERCE COMMISSION, APPELLANT,

vs.

GREAT NORTHERN RAILWAY COMPANY ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

FILED NOVEMBER 30, 1914.

(22425)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 453.

THE INTERSTATE COMMERCE COMMISSION, APPELLANT,

vs.

GREAT NORTHERN RAILWAY COMPANY ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

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1 United States of America. In the Circuit Court of the United States for the District of Minnesota, Third Division.

NORTHERN PACIFIC RAILWAY COMPANY, GREAT Northern Railway Company, Chicago, Burlington and Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad and Navigation Company, complainants, *vs.* THE INTERSTATE COMMERCE COMMISSION, defendants.	No. 884. Equity.

Pleas before the honorable the judges of the Circuit Court of the United States of America for the District of Minnesota, Third Division, of the June, A. D. 1910, term of said court, held in said district in the year of our Lord one thousand nine hundred and ten (1910).

District of Minnesota:

Be it remembered that on the 1st day of October, A. D. 1908, came the complainants by their solicitors and counsel and filed in the clerk's office of said court their bill of complaint, which is omitted from this return in view of the subsequent filing of an amended bill of complaint.

And thereupon, upon application of said solicitors, a writ of subpœna was duly issued out of said court and under the seal thereof duly vested, and in the words and figures following, to wit:

2 Circuit Court of the United States, District of Minnesota, Third Division.

GREAT NORTHERN RAILWAY COMPANY ET AL., *vs.* INTERSTATE COMMERCE COMMISSION.	Præcipe for chancery subpœna.

To the clerk of the above named court:

Please issue chancery subpœna directed to the above named defendant, returnable November Rules, 1908.

F. C. DILLARD,
JAMES B. KERR,
HALE HOLDEN,
Solicitors for Complnts.

3 United States Circuit Court, District of Minnesota, Third Division.

Chancery Common Rule and Order Book.

GREAT NORTHERN RAILWAY COMPANY ET AL. *vs.* INTERSTATE COMMERCE COMMISSION.	Equity No. 885.

1910, Oct. 1st.

The complainants herein having filed a bill in equity in this cause, on application of F. C. Dillard, James B. Kerr, and Hale Holden,

solicitors for said complainants, it is hereby ordered that a chancery subpœna issue as therein prayed.

(Entered C. R. "C," page 8.)

4 [Original.]

United States of America, District of Minnesota, Third Division.

The President of the United States of America to the Interstate Commerce Commission, greeting:

You are hereby commanded to be and appear at rules, to be held at the office of the clerk of the Circuit Court of the United States for the District of Minnesota on the first Monday of November next, at the city of St. Paul, then and there to answer the bill of complaint of Great Northern Railway Company, Northern Pacific Railway Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad and Navigation Company, citizens of the States of Wisconsin, Minnesota, Utah, Illinois, and Oregon, filed against you on the 1st day of October, A. D. 1908; hence fail not.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 1st day of October, 1908.

Issued at my office in the city of St. Paul under the seal of said Circuit Court the day and year last aforesaid.

[SEAL OF COURT.] HENRY D. LANG, *Clerk.*

Memorandum: The above-named defendant to enter its appearance in this suit in the clerk's office aforesaid on or before the day at which this writ is returnable, otherwise the bill may be taken pro confesso.

HENRY D. LANG, *Clerk.*

F. C. DILLARD,
JAMES B. KERR,
HALE HOLDEN,
Complainants' Solicitors.

(Endorsed:) Chancery subpœna, returnable November Rules, 1908. Served copy of within writ on within-named defendant by service on E. A. Moseley, its secretary. Oct. 3, 1908. Aulick Palmern, U. S. marshal, Dist. of Columbia. Filed October 8th, 1908. Henry D. Lang, clerk.

5 Thereafter and on the 12th day of October the following appearance of Luther M. Water for defendant and order of appearance were filed and entered in said cause, to wit:

6 Circuit Court of the United States, District of Minnesota, Third Division.

G. N. RY. CO. ET AL.
vs.
INTERSTATE COMMERCE COMMISSION. } No. 885. Appearance.

The clerk will enter my appearance for the defendant in above entitled case.

LUTHER M. WALTER.

(Endorsed:) Appearance of Luther M. Walter, for deft. Entd. C. R. "C," page 142. Filed October 12th, 1908. Henry D. Lang, clerk. By Louise B. Trott, deputy.

7 United States Circuit Court, District of Minnesota, Third Division.

Chancery Rule and Order Book.

GREAT NORTHERN RAILWAY COMPANY ET AL. *vs.* INTERSTATE COMMERCE COMMISSION. | Oct. 12. No. 885. Equity.

This day comes the defendant by Luther M. Walter, solicitor, on whose motion it is hereby ordered that the appearance of said defendant be, and the same is hereby, entered.

(Entered C. R. "C," page 140.)

Thereafter and on the 16th day of October the following certificate of the Attorney General was filed in said cause, to wit:

8 In the Circuit Court of the United States for the District of Minnesota.

GREAT NORTHERN RAILWAY COMPANY ET AL. *vs.* THE INTERSTATE COMMERCE COMMISSION.

To the clerk of said court:

I hereby certify that the above entitled cause now pending in said court is a suit in equity brought by the Great Northern Railway Company et al. against the Interstate Commerce Commission under the act of Congress entitled "An act to regulate commerce," as amended by the act of June 29, 1906, and that said suit is, in my opinion, a case of general public importance.

I therefore request that, complying with the provisions of the act of Congress entitled "An act to expedite the hearing and determination of suits in equity pending or hereafter brought under the act of July 2, 1890, entitled 'An act to protect trade and commerce against unlawful restraints and monopolies,' 'An act to regulate commerce,' approved February 4, 1887, or any other acts having a like purpose that may be hereafter enacted," approved February 11, 1903; and in further compliance with the provisions contained in section 16 of the "Act to regulate commerce," approved June 29, 1906, you will file this certificate among the records of the above entitled cause, and immediately furnish a copy thereof to each of the circuit judges of the Eighth Circuit, to the end that said case shall be given precedence over other cases in said court, and will be assigned for hearing at the

earliest practicable date before not less than three of the circuit judges of said circuit, as is provided by the said act of February 11, 1903.

CHARLES J. BONAPARTE,
Attorney General.

WASHINGTON, D. C., *October 13, 1908.*

9 (Endorsed:) Certificate of the Attorney General under the acts of February 11th, 1903, and June 29th, 1906. Filed October 16th, 1908. Henry D. Lang, clerk.

Thereafter and on the same day the following certificate of Henry D. Lang, clerk, was filed in said cause, to wit:

10 United States Circuit Court, District of Minnesota, Third Division.

GREAT NORTHERN RAILWAY COMPANY ET AL.
vs.
THE INTERSTATE COMMERCE COMMISSION.

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I, Henry D. Lang, clerk of the Circuit Court of the United States for the District of Minnesota, do hereby certify that on the 16th day of October, A. D. 1908, I personally handed to and left with the Honorable Walter H. Sanborn, one of the United States circuit judges for the Eighth Circuit, at St. Paul, Minnesota, a duly certified copy of the certificate of the Attorney General, under the acts of February 11th, 1903, and June 29th, 1905, this day filed in the above entitled cause, and that on the same day I mailed a certified copy to the Honorable Willis Van Devanter, by enclosing a copy thereof in an envelope addressed to him at Cheyenne, Wyoming, and depositing the same in the post office at St. Paul, Minnesota, and that on the same day I also mailed a duly certified copy of said certificate to the Honorable Elmer B. Adams, by enclosing the same in an envelope addressed to him at St. Louis, Missouri, and depositing the same in the post office at St. Paul, Minnesota, and that on the same day I also mailed a duly certified copy of said certificate to the Honorable William C. Hook, by enclosing the same in an envelope addressed to him at Leavenworth, Kansas, and depositeding the same in the post office at said St. Paul, Minnesota.

In witness whereof I have hereunto set my hand and official seal this 16th day of October, A. D. 1908.

HENRY D. LANG, *Clerk.*

(Endorsed:) Certificate of Henry D. Lang, clerk, of delivery of Attorney General's certificate to U. S. circuit judges. Filed October 16th, 1908. Henry D. Lang, clerk.

11 Thereafter and on October 16th, 22nd, and 27th the following receipts of the circuit judges for Attorney General's certificate were filed in said cause, to wit:

12 United States Circuit Court, District of Minnesota, Third Division.

GREAT NORTHERN RAILWAY COMPANY ET AL.
vs.
THE INTERSTATE COMMERCE COMMISSION.

Received of Henry D. Lang, clerk of the Circuit Court of the United States for the District of Minnesota, a certified copy of the certificate of the Attorney General of the United States of America under the acts of February 11, 1903, and June 29th, 1906, filed in the above entitled cause October 16th, 1908.

Dated October 16th, 1908.

WALTER H. SANBORN,
Circuit Judge.

(Endorsed:) Receipt of Hon. Walter H. Sanborn for Attorney General's certificate. Filed October 16th, 1908. Henry D. Lang, clerk.

13 United States Circuit Court of Appeals, Eighth Circuit.

(Hon. David J. Brewer, circuit justice, Washington, D. C. Hon. Walter H. Sanborn, St. Paul, Minn.; Hon. Willis Van Devanter, Cheyenne, Wyo.; Hon. William C. Hook, Leavenworth, Kan.; Hon. Elmer B. Adams, St. Louis, Mo.; circuit judges.)

ST. LOUIS, MO., *Oct. 20, 1908.*

HENRY D. LANG, ESQ.,
Clerk United States Circuit Court,
St. Paul, Minnesota.

DEAR SIR: I beg to acknowledge receipt of your letter of October 16th, with enclosures. I see no occasion for accepting service in the manner suggested by some of your enclosures as if the proceeding were a suit against the judges individually.

Very respectfully, yours, ELMER B. ADAMS.

(Endorsed:) Receipt of Judge Elmer B. Adams for Attorney General's certificate. Filed October 22nd, 1908. Henry D. Lang, clerk.

14 ST. LOUIS, MISSOURI, *October 19 1908.*

Mr. HENRY D. LANG, *Clerk,*
St. Paul, Minnesota.

DEAR SIR: I am in receipt of yours of the 16th inst. enclosing copies of the certificates of the Attorney General in the three cases,

Union Pacific Railroad Co., Northern Pacific Railway Co., and Great Northern Railway Co., against the Interstate Commerce Commission, Nos. 883, 884, and 885, in the Circuit Court for the Minnesota District.

Very truly, WILLIAM C. HOOK.

(Endorsed:) Receipt of Judge Wm. C. Hook for Attorney General's certificate. Filed October 22nd, 1908. Henry D. Lang, clerk.

15 ST. PAUL, *October 16, 1908.*

Hon. WILLIS VAN DEVANTER,
U. S. Circuit Judge, Cheyenne, Wyo.

MY DEAR JUDGE: I hand you herewith a certified copy of the certificate of the Attorney General of the United States of America under the acts of February 11, 1903, and June 29, 1906, filed to-day in each of the cases of 883 Equity, Union Pacific Rd. Co. et al. vs. Interstate Commerce Commission; 884 Equity, Northern Pacific Railway Co. et al. vs. Interstate Commerce Commissin, and 885 Equity, Great Northern Railway Co. et al. vs. Interstate Commerce Commission, together with a receipt for each, which kindly sign and return to me.

Yours, very truly, HENRY D. LANG, *Clerk.*

Dictated.

ST. PAUL, *Oct. 28, 1908.*

The above enclosures were received by me to-day, the same having been forwarded from Cheyenne.

WILLIS VAN DEVANTER.

(Endorsed:) Receipt of Judge Van Devanter for certificate of Attorney General. Filed October 27th, 1908. Henry D. Lang, clerk. By Louise B. Trott, deputy.

16 Thereafter and on October 20th, 1908, the following amended bill of complaint was filed in said cause, to wit:

17 In the Circuit Court of the United States for the District of Minnesota, Third Division.

GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC RAILWAY COMPANY, CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY, UNION PACIFIC RAILROAD COMPANY, OREGON SHORT LINE RAILROAD COMPANY, OREGON RAILROAD AND NAVIGATION COMPANY, AND SOUTHERN PACIFIC COMPANY, complainants, *v.* THE INTERSTATE COMMERCE COMMISSION, DEFENDANT.	In Equity. No. 885.

Amended bill of complaint.

To the honorable judges of the Circuit Court of the United States within and for the District of Minnesota:

Great Northern Railway Company, a corporation organized under the laws of the State of Minnesota; Northern Pacific Railway Com-

pany, a corporation organized under the laws of the State of Wisconsin; Chicago, Burlington and Quincy Railroad Com-
18 pany, a corporation organized under the laws of the State of Illinois; Union Pacific Railroad Company, a corporation organized under the laws of the State of Utah; Oregon Short Line Railroad Company, a corporation organized under the laws of the State of Utah; Oregon Railroad and Navigation Company, a corporation organized under the laws of the State of Oregon; and Southern Pacific Company, a corporation organized under the laws of the State of Kentucky, bring this, their amended bill, against the Interstate Commerce Commission, established and existing under and by virtue of an act of the Congress of the United States.

And thereupon your orators complain and say:

I. That the Great Northern Railway Company is a corporation duly organized and existing under the laws of the State of Minnesota; that the Northern Pacific Railway Company is a corporation duly organized and existing under and by virtue of the laws of the State of Wisconsin; that the Chicago, Burlington and Quincy Railroad Company is a corporation duly organized and existing under the laws of the State of Illinois; that the Union Pacific Railroad Company is a corporation duly organized and existing under the laws of the State of Utah; that the Oregon Short Line Railroad Company is a corporation duly organized and existing under the laws of the State of Utah; that the Oregon Railroad and Navigation Company is a corporation duly organized and existing under the laws of the State of Oregon; and that the Southern Pacific Company is a corporation duly organized and existing under the laws of the State of Kentucky; that the defendant, the Interstate Commerce Commission, has
19 been created and established, and during all the times herein mentioned has existed, under and by virtue of an act of the Congress of the United States, entitled "An act to regulate commerce," approved February 4, 1887, and the acts amendatory thereof.

Your orators further show that the Great Northern Railway Company has its principal operating office in the city of St. Paul, in the District of Minnesota, third division thereof.

II. Your orators further show that the Northern Pacific Railway Company, Great Northern Railway Company, Chicago, Burlington and Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad and Navigation Company, and Southern Pacific Company are each common carriers, engaged in the transportation of property by railroad, by continuous carriage or shipment, from points in the States of Washington, Oregon, Montana, and Idaho to points in the States of Montana, North Dakota, Minnesota, Wisconsin, Illinois, Iowa, Missouri, Kansas, Nebraska, Utah, and Colorado, and have been so engaged for many years past, and a large proportion of the property so transported by your orators is, and has been, lumber, shingles, and other forest products produced at points in the States of Washington, Oregon, Montana, and Idaho. That for the purpose of transporting

the lumber, shingles, and other forest products so produced in the States of Washington, Oregon, Montana, and Idaho to points of consumption in the States above named, your orators have established and maintained through routes and joint rates over their lines
20 and the lines of connecting railways from said points in the States of Washington, Oregon, Montana, and Idaho to destinations in said other States.

III. The rates for the transportation of lumber, shingles, and forest products from points in the States of Washington, Oregon, Montana, and Idaho over the lines of your orators' railways to points thereon in the States above mentioned, and to points in said States and other States over lines of connecting railways, which rates were in effect on October 31, 1907, and which had been in effect for a long time before that date, were prescribed in certain tariffs duly filed, published, and posted under the provisions of the act entitled "An act to regulate commerce." These tariffs are known and described as follows: S. R. No. 662, I. C. C. No. 564; G. N. G. F. O. 9838, I. C. C. No. A–1101; G. N. G. F. O. 13051, I. C. C. No. A–1427; G. N. G. F. O. 17526, I. C. C. No. A–2231; G. N. F. O. 18025, I. C. C. No. A–2427; G. N. G. F. O. 18837, I. C. C. No. A–2661; Northern Pacific No. 23275, I. C. C. No. A–3095, and Northern Pacific No. 20285, I. C. C. No. B–479, and are too voluminous to be set out in this amended bill of complaint, but true copies thereof have been filed in cause No. 884, entitled "Northern Pacific Railway Company and others v. The Interstate Commerce Commission," heretofore filed and now pending in this court, and reference thereto for convenience is hereby prayed as if the same were made a part of this amended bill of complaint and filed herewith, the said tariffs being marked, respectively, Exhibits 1 to 8, inclusive.

21 IV. That more than thirty days previous to November 1, 1907, your orators, together with a large number of other carriers, filed, published, and posted, in accordance with the provisions of that certain act of Congress, entitled "An act to regulate commerce," approved February 4, 1887, and the acts amendatory thereof, a certain tariff known as "Transcontinental Freight Bureau East-bound Special Tariff No. S. R. 963, I. C. C. No. 850," with supplements 1 and 2, which became effective November 1, 1907, wherein rates were prescribed for the transportation of lumber, shingles, and forest products from points in the States of Washington, Oregon, Montana, and Idaho to points in North Dakota, South Dakota, Montana, Minnesota, Wisconsin, Iowa, Illinois, Missouri, Nebraska, Arkansas, Louisiana, Texas, Oklahoma, New Mexico, Colorado, Kansas, Utah, and Wyoming, and at or about the same time your orator, Great Northern Railway Company, filed, published, and posted, under the provisions of said act of Congress, a certain local and joint tariff known as "Great Northern I. C. C. No. A-2667," which prescribed the rates for the transportation of lumber, shingles, and forest products from points in the States of Washington, Oregon, Montana, and Idaho to points in Oregon, Washington, Idaho, Mon-

tana, Alberta, and British Columbia, which said tariff, and the rates therein prescribed, became effective on November 1, 1907, and at or about the same time your orator, Northern Pacific Railway Company, filed, published, and posted a certain local and joint tariff pre-
22 scribing rates for the transportation of lumber, shingles, and forest products from points in the States of Washington, Oregon, Montana, and Idaho to points in Idaho, Montana, and North Dakota, which rates became effective on November 2, 1907, said tariff being I. C. C. No. A-3432.

That said tariffs above described are too voluminous to be set out in this amended bill of complaint; that true copies thereof have been filed in said Cause No. 884, entitled "Northern Pacific Railway Company et al. against The Interstate Commerce Commission," heretofore referred to, and reference thereto is hereby prayed, as if the same were made a part of this amended bill of complaint, the said tariff I. C. C. No. 850 being marked "Exhibit 9," the said tariff I. C. C. No. A-2667 being marked "Exhibit 10," and the said tariff I. C. C. No. A-3432 being marked "Exhibit 11."

That in and by said tariffs so filed, published, and posted the articles or commodities therein described were designated as groups A, B, C, and D, and by the terms thereof group A comprised shingles, group B comprised lumber, poles, piling, and timbers of cedar of single car lengths, and certain articles manufactured from cedar, group C comprised lumber, poles, piling, and timbers of fir, hemlock, larch, pine, and spruce of single car lengths, and certain articles manufactured therefrom, and group D comprised long timbers, poles, piling, or lumber requiring two or more cars for transportation.

V. That the rates named in said tariffs so filed, published, and posted thereupon became, were, and are the only lawful rates
23 for the transportation of the various commodities comprised within said four groups, from each and all of the points in the States of Washington, Oregon, Montana, and Idaho named in said tariffs to each and all of the points of destination in said other States named in said tariffs, and said rates, and each and all of them, were, on November 1, 1907, ever since have been and now are low for the service rendered and by comparison with other rates, and as such neither unreasonable nor unjust, and, as your orators verily believe, will continue so to be for the period of two years from October 15, 1908.

VI. That as soon as the said rates prescribed by the tariffs above mentioned became effective, a certain proceeding was commenced before the Interstate Commerce Commission entitled "Potlatch Lumber Company and others vs. Northern Pacific Railway Company and others," being cause No. 1348 before said Commission. In said cause No. 1348 the Potlatch Lumber Company and others complained against your orators and other carriers parties to said tariffs, and the complainants in said cause alleged that they were engaged in the manufacture and interstate shipment and sale of lumber, shingles, and other forest products from points within to points without the States of

Washington, Oregon, and Idaho, the rates on which were fixed by said tariffs, and alleged that the rates fixed therein for the transportation of such commodities were unreasonable and unjust. Upon the filing of the complaint in said cause, the defendant, Interstate Commerce Commission, required your orators and the other carriers named as defendants in said proceeding to answer the complaint of said complainants, and thereupon an answer was
24 duly filed by your orators, and upon the issues raised therein evidence was produced before the said Interstate Commerce Commission by such complainants and by your orators, and the matters in difference in said cause were submitted to the commission on April 14, 1908.

VII. Thereafter, and on June 2, 1908, the defendant, Interstate Commerce Commission, entered an order in said cause No. 1348, which order was in words and figures as follows:

Order.

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 2nd day of June, A. D. 1908.

Present: Martin A. Knapp, Judson C. Clements, Charles A. Prouty, Francis M. Cockrell, Franklin K. Lane, Edgar E. Clark, James S. Harlan, Commissioners.

No. 1348.

Potlatch Lumber Company; St. Joe Lumber Company; B. R. Lewis Lumber Company; McGoldrick Lumber Company; Lamb-Davis Lumber Company; Fidelity Lumber Company; Washington Mill Company; Orrin S. Good; National Lumber Company; Cascade Lumber Company; Springston Lumber Company; Wm. Musser Lumber & Manufacturing Company; Phoenix
25 Lumber Company; Standard Lumber Company; Karamin Lumber Company; E. A. Humphrey and J. R. Humphrey, partners doing business under the name of the Elkhorn Saw Mills; Burkeye Lumber Company; Lindsey Brothers Company; W. H. Gerhart-Bradrick Lumber Company, a copartnership composed of W. H. Gerhart and A. V. Bradrick; S. H. & L. Lumber Company, a copartnership composed of G. W. Shaw, J. J. Herlihy, and A. W. Lammert; Idaho Pole Company, a copartnership composed of W. L. Beckwith and John H. Fowler; Chewelah Mill Company; Reeves-Farrell Lumber Company; Post Falls Lumber & Manufacturing Company; Laclede Lumber Company; Bonners Ferry Lumber Company; Dehlbohm Lumber Company; Humbird Lumber Company; Dover Lumber Company; Sand Point Lumber & Pole Company; Barber Lumber Company; Overland Lumber Company; Pan-Handle Lumber Company, Limited; George Palmer Lumber Company; Grande Ronde Lumber Company; Stoddard Brothers Company; Schockley & McMurren Lumber

Company; Goodnough Mercantile & Stock Company; Summerville Lumber Company; Wisconsin-Oregon Lumber Company; and Empire Lumber Company.

v.

Northern Pacific Railway Company; Great Northern Railway Company; Chicago, Burlington & Quincy Railroad Company; Spokane Falls & Northern Railway Company; Columbia & Red Mountain Railway Company; Kootenai Valley Railway Company; Red Mountain Railway Company; Southern Pacific Company; Union Pacific Railroad Company; Oregon Short Line Railroad Company; Oregon Railroad & Navigation Company; Chicago & Northwestern Railway Company; Chicago, Milwaukee &
26 St. Paul Railway Company; Canadian Pacific Railway Company; Spokane-International Railway Company; Coeur d'Alene & Spokane Railway Company, Limited; Spokane & Inland Railway Company; Minneapolis, St. Paul & Sault Ste. Marie Railway Company; Idaho & Washington Northern Railroad Company; and Chicago, Milwaukee & St. Paul Railway Company of Washington, defendants; Oregon & Washington Lumber Manufacturers' Association, Intervener.

This case being at issue upon complaints and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the commission having on the date hereof made and filed a report containing its conclusions thereon:

It is ordered that said defendants, except the Chicago, Milwaukee and St. Paul Railway Company of Washington, are hereby notified and required to cease and desist on or before the 15th day of August, 1908, from enforcing their present relation of rates on interstate shipments of lumber, shingles, and other forest products from points of origin in Washington, Oregon, Idaho, and Montana, to points in various States and Territories east and southeast thereof, excluding those points to which rates are prescribed by the commission in case No. 1054, Pacific Coast Lumber Manufacturers' Asso. et al. v. Northern Pacific Ry. Co. et al., and case No. 1331, Western Oregon Lumber Manufacturers' Asso. et al. v. Southern Pacific Co. et al.

It is further ordered that said defendants and each of them, except the Chicago, Milwaukee & St. Paul Railway Company of Washington, be, and they are hereby, notified and required to establish and
put in force on or before the said 15th day of August, 1908,
27 and maintain in force thereafter during a period of not less than two years rates on said interstate shipments of lumber, shingles, and other forest products in accordance with the following differentials:

Rates from the group of points east of the summit of the Cascade Mountains and west of the present "Spokane rates" group to points

on and west of a line drawn from Pembina, N. Dak., southward through Grand Forks, N. Dak.; Moo'head and Breckenridge, Minn.; Sioux City and Council Bluffs, Iowa; St. Joseph and Kansas City, Mo., and thence to Port Arthur, Texas, along the Kansas City Southern Railway, including all points that now take the same rates as any of the points on that line between and including Sioux City, Iowa, and Kansas City, Mo., shall be less than the rates prescribed by the commission in cases No. 1327, Oregon & Washington Lumber Manufacturers' Asso. et al. v. Union Pacific R. R. et al.; No. 1329, Pacific Coast Lumber Manufacturers' Asso. et al. v. Northern Pacific Ry. Co. et al.; and No. 1335, Southwest Washington Lumber Manufacturers' Asso. v. Northern Pacific Ry. Co. et al.; from the "coast rates" group, by differentials beginning at not less than 2 cents per 100 pounds and graded up westwardly (a) to a differential of not less than 6 cents per 100 pounds at Buford, N. Dak., on the line of the Great Northern Railway; (b) to a differential of not less than 6 cents per 100 pounds at Medora, N. Dak., on the line of the Northern Pacific Railway; (c) to a differential of not less than 6 cents per 100 pounds at Edgemont, S. Dak., on the line of the Chicago, Burlington & Quincy Railroad; (d) to a differential of not less than 6 cents per 100 pounds at Cheyenne, Wyo., on the line of the Union Pacific Railroad; (e) and to a differential of not less than 6 cents per 100 pounds at Denver, Colo., on the line of the Union Pacific Railroad.

Rates from the present "Spokane rates" group and from the present "Montana-Oregon" rates group to points on the west of said north and south line, Pembina-Port Arthur, including all points that now take the same rates as any of the points on that line between and including Sioux City, Iowa, and Kansas City, Mo., shall be
28 less than the "coast rates," as prescribed in the cases specified, by differentials beginning at not less than 3 cents per 100 pounds and graded up westwardly therefrom to a differential of not less than 7 cents per 100 pounds at Buford, N. Dak.; Medora, N. Dak.; Edgemont, S. Dak.; Cheyenne, Wyo.; and Denver, Colo., as described in the preceding paragraph.

Rates from the group of points east of the summit of the Cascade Mountains and west of the present "Spokane rates" groups to points east of said line, Pembina-Port Arthur, and excluding all points to which the rates are now the same as to any of the points located on said line between and including Sioux City, Iowa, and Kansas City, Mo., shall be less than the "coast rates," as prescribed in the cases specified, by a differential of not less than 2 cents per 100 pounds up to and including Duluth, Minneapolis, St. Paul, and Minnesota Transfer, Minn., and from the Missouri River crossings to the Mississippi River crossings.

Rates from the said "Spokane rates" group and the "Montana-Oregon" rates group, as those groups now exist, to points east of said line, excluding all points to which the rates are now the same as to any of the points located on said line between and including Sioux City, Iowa, and Kansas City, Mo., shall be less than the "coast

rates," as prescribed in the cases specified, by a differential of not less than 3 cents per 100 pounds up to and including Duluth, Minneapolis, St. Paul, and Minnesota Transfer, Minn., and from the Missouri River crossings to the Mississippi River crossings.

And it is further ordered that as to the Chicago, Milwaukee & St. Paul Railway Company of Washington the complaint in this proceeding be, and it is hereby, dismissed.

VIII. And your orators further show that in said cause numbered 1348, wherein the Potlatch Lumber Company et al. are complainants and your orators are defendants, the said defendant, Inter-
29 state Commerce Commission, on July 27, 1908, by order duly entered, changed and extended the effective date of said order from August 15 to October 15, 1908.

IX. Your orators further show that the orders in cause No. 1054, entitled "Pacific Coast Lumber Manufacturers' Association et al. v. Northern Pacific Railway Company et al.," and in cause No. 1331, entitled "Western Oregon Lumber Manufacturers' Association et al. v. Southern Pacific Company et al.," and in cause No. 1327, entitled "Oregon and Washington Lumber Manufacturers' Association et al. v. Union Pacific Railroad Company et al.," and in cause No. 1329, entitled "Pacific Coast Lumber Manufacturers' Association et al. v. Northern Pacific Railway Company et al.," and in cause No. 1335, entitled "Southwest Washington Lumber Manufacturers' Association v. Northern Pacific Railway Company et al.," are as follows, to wit:

30 Order.

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 1st day of June, A. D. 1908.

Present: Martin A. Knapp, Judson C. Clements, Charles A. Prouty, Francis M. Cockrell, Franklin K. Lane, Edgar E. Clark, James S. Harlan, commissioners.

No. 1054.

Pacific Coast Lumber Manufacturers' Association; Southwestern Washington Lumber Manufacturers' Association, and Shingle Mills Bureau

vs.

Northern Pacific Railway Company; Great Northern Railway Company; Northern Pacific Terminal Company of Oregon; Oregon Railroad & Navigation Company; Oregon Short Line Railroad Company; Union Pacific Railroad Company; Oregon & California Railroad Company; Southern Pacific Company; Rio Grande Western Railway Company; Denver & Rio Grande Railroad Company; Colorado Midland Railway Company; Colorado & Southern Railway Company; Chicago, Burlington & Quincy Railroad Company; Atchison, Topeka & Santa Fe Railway Company; Chicago, Rock

Island & Pacific Railway Company; Missouri Pacific Railway Company; Leavenworth, Kansas & Western Railway Com-
31 pany; St. Joseph & Grand Island Railway Company; Kansas City Northwestern Railway Company, and Chicago & Northwestern Railway Company.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the commission having, on the date hereof, made and filed a report containing its conclusions thereon:

It is ordered that the defendants, the Northern Pacific Railway Company, the Northern Pacific Terminal Company of Oregon, the Oregon Railroad & Navigation Company, the Oregon Short Line Railroad Company, and the Union Pacific Railroad Company, be, and they are hereby, notified and required to establish, on or before the 15th day of August, 1908, between their respective lines of transportation, and maintain in operation for a period of not less than two years from said 15th day of August, through routes for the transportation of fir lumber, cedar lumber, spruce lumber, and shingles, from points on the lines of the Northern Pacific Railway Company in Washington north of Portland, Ore., through said Portland to Ogden and Salt Lake City, Utah, and common points in Utah; and also are required to establish and put in force on or before the said 15th day of August, and for a period of at least two years thereafter maintain a joint through rate not exceeding 40 cents per 100 pounds in carloads for the transportation of fir lumber and spruce lumber between said points, and a rate not exceeding 50 cents per 100 pounds in carloads for the transportation of cedar lumber and shingles between said points; and the said defendants are hereby authorized to make said joint rates effective upon three days' notice to the public and the commission, given in the manner required by law. The joint tariff must contain the notation
32 that it is issued under the authority hereby granted, and must refer to the title and number of this case.

It is further ordered that as to the establishment of a through route and joint rate applicable to the movement of lumber and shingles from western Washington through said Portland over the lines of the Northern Pacific Railway Company and the Great Northern Railway Company and the Union Pacific system to other named eastern destinations, the complaint in this proceeding be, and it is hereby, dismissed.

Order.

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 1st day of June, A. D. 1908:

Present: Martin A. Knapp, Judson C. Clements, Charles A. Prouty, Francis M. Cockrell, Franklin K. Lane, Edgar E. Clark, James S. Harlan, commissioners.

No. 1331.

WESTERN OREGON LUMBER MANUFACTURERS' ASSOCIATION; WILLAMETTE VALLEY LUMBER COMPANY; FALLS CITY LUMBER COMPANY; CURTISS LUMBER COMPANY; CHARLES K. SPALDING LOGGING COMPANY; BOOTH-KELLY LUMBER COMPANY; J. H. CHAMBERS; H. M. PARVIN; and CRUZAN BROTHERS, complainants; and INMAN-POULSEN LUMBER COMPANY; OREGON & WASHINGTON LUMBER COMPANY; EAST SIDE MILL & LUMBER COMPANY; STANDARD BOX AND LUMBER COMPANY; JONES LUMBER COMPANY; and ST. JOHNS LUMBER COMPANY, interveners,

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v.

SOUTHERN PACIFIC COMPANY AND OREGON & CALIFORNIA RAILROAD COMPANY.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the commission having, on the date hereof, made and filed a report containing its conclusions thereon:

It is ordered that the defendants, the Southern Pacific Company and the Oregon & California Railroad Company be, and they are hereby, notified and required to cease and desist, on or before the 15th day of August, 1908, from charging, demanding, collecting, or receiving for the transportation of rough, green fir lumber and lath, in carloads, their present rate of $5 per ton from points upon the east bank of the Willamette River, in the State of Oregon, and upon the west bank thereof south of Corvallis, Oregon, and upon the west bank of said river north of said Corvallis, to San Francisco, Cal., and bay points.

It is further ordered that said defendants be, and they are hereby, notified and required to establish and put in force on or before the said 15th day of August, 1908, and maintain in force thereafter during a period of not less than two years, and apply to the transportation of rough, green fir lumber and lath in carloads, a rate not exceeding $3.40 per ton from points upon the east bank of said Willamette River and upon the west bank thereof south of said Corvallis to San Francisco, Cal., and bay points; and a rate not exceeding $3.65 per ton from points upon the west bank of said river north of said Corvallis to said San Francisco and bay points, not including in either rate Portland, Oregon, as a point of origin.

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And it is further ordered that said defendants be, and they are hereby, authorized to make effective upon three days' notice to the public and the Interstate Commerce Commission, given in the manner required by law, such rates as it may be necessary for said defendants, or either of them, to establish for the purpose of com-

plying with this order. The schedules containing such rates must bear the notation that said rates are issued under the authority hereby granted, and must refer to the title and number of this case.

Order.

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 2nd day of June, A. D. 1908.

Present: Martin A. Knapp, Judson C. Clements, Charles A. Prouty, Francis M. Cockrell, Franklin K. Lane, Edgar E. Clark, James S. Harlan, Commissioners.

No. 1327.

OREGON & WASHINGTON LUMBER MAN'FACTURERS' ASSOCIATION; Eastern & Western Lumber Company; Curtiss Lumber Company; Clark & Wilson Lumber Company; Portland Lumber Company; Peninsular Lumber Company; Tongue Point Lumber Company; Booth-Kelly Lumber Company; North Pacific Lumber Company; Bridal Veil Lumbering Company; and Stanley Smith Lumber Company

35 *v.*

UNION PACIFIC RAILROAD COMPANY; OREGON SHORT LINE RAILROAD Company; Oregon Railroad & Navigation Company; Southern Pacific Company; Northern Pacific Railway Company; Great Northern Railway Company; Chicago, Burlington & Quincy Railroad Company; Astoria & Columbia River Railroad Company; Oregon & California Railroad Company, and Corvallis & Eastern Railroad Company.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties and full investigation of the matters and things involved having been had, and the commission having, on the date hereof, made and filed a report containing its conclusions thereon, to which report reference is hereby made:

It is ordered that said defendants Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad & Navigation Company, Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Chicago, Burlington & Quincy Railroad Company, Astoria & Columbia River Railroad Company, Oregon & California Railroad Company, and Corvallis & Eastern Railroad Company, and each of them, be, and they are hereby, notified and required to cease and desist on or before the 15th day of August, 1908, from enforcing their present rates on interstate shipments of lumber, shingles, and other forest products, from points of origin in Oregon, Washington, Idaho, Montana, and British Columbia to points in various States and Territories east and

southeast thereof, excluding those points to which rates are prescribed by the commission in case No. 1054, Pacific Coast Lumber Manufacturer's Asso. et al. *v.* Northern Pacific Ry. Co.
36 et al., decided June 2, 1908, and in case No. 1331, Western Oregon Lumber Manufacturers' Asso. et al. *v.* Southern Pacific Co. et al., decided June 2, 1908.

It is further ordered that said defendants, and each of them, be, and they are hereby, notified and required to establish and put in force on or before the said 15th day of August, 1908, and maintain in force thereafter during a period of not less than two years, rates on said interstate shipments of lumber, shingles, and other forest products from said points of origin to said points of destination which shall in no instance exceed the rates on like shipments between the same points which had been duly filed with the commission as required by law, and which were in effect immediately prior to November 1, 1907, subject to present minimum weight regulations and to the following limitations:

The rates on said lumber, shingles, and other forest products from said points of origin to all points on and west of a line drawn from Pembina, N. Dak., southward through Grand Forks, N. Dak., Moorhead and Breckenridge, Minn., Sioux City and Council Bluffs, Iowa, St. Joseph and Kansas City, Mo., and thence to Port Arthur, Tex., along the Kansas City Southern Railway, also including all points that now take the same rates as any of the points located on said line between and including Sioux City, Iowa, and Kansas City, Mo., and excluding those points to which rates are prescribed in case No. 1054, Pacific Coast Lumber Manufacturers' Asso. et al. *v.* Northern Pacific Ry. Co. et al., decided June 2, 1908, and in case No. 1331, Western Oregon Lumber Manufacturers' Asso. et al. *v.* Southern Pacific Co. et al., decided June 2, 1908, which were in effect immediately prior to November 1, 1907, shall be restored, except that the differentials prescribed in case No. 1348, Potlatch Lumber Co. et al. *v.* Northern Pacific Ry. Co. et al., decided June 2, 1908, shall be observed; the rates which were in effect immediately prior to November 1, 1907, from said points of origin to points east of the line mentioned, and excluding all points to which the rates are now the same as to any of the points located on said line between and including Sioux
37 City, Iowa, and Kansas City, Mo., may be increased, in no case exceeding 5 cents per 100 pounds, and subject to the differentials prescribed in said case No. 1348.

This case will be held open for such supplemental proceedings as it may be necessary for interested parties to institute in respect to reparation.

Order.

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 2nd day of June, A. D. 1908.

Present: Martin A. Knapp, Judson C. Clements, Charles A. Prouty, Francis M. Cockrell, Franklin K. Lane, Edgar E. Clark, James S. Harlan, commissioners.

No. 1329.

PACIFIC COAST LUMBER MANUFACTURERS' ASSOCIATION; ST. PAUL & Tacoma Lumber Company; Atlas Lumber & Shingle Company; Page Lumber Company; Day Lumber Company; White River Lumber Company; Three Lakes Lumber Company; Wallace Lumber & Manufacturing Company; Grays Harbor Commercial Company; Tacoma Mill Company; Northwestern Lumber Company; Melrose Cedar Shingle Company; Shingle Mills Bureau; J. H. Cavanagh and W. R. Burke

vs.

NORTHERN PACIFIC RAILWAY COMPANY; GREAT NORTHERN
38 Railway Company; Chicago, Burlington & Quincy Railroad Company; Oregon Railroad & Navigation Company; Oregon Short Line Railroad Company; Union Pacific Railroad Company; Canadian Pacific Railway Company; Minneapolis, St. Paul & Sault Ste. Marie Railway Company; Rio Grande Western Railway Company; Denver & Rio Grande Railroad Company; Chicago & Northwestern Railway Company; Chicago Great Western Railway Company; Minneapolis & St. Louis Railroad Company; Wisconsin Central Railway Company; Lake Shore & Michigan Southern Railway Company; New York Central & Hudson River Railroad Company; Bellingham Bay & British Columbia Railroad Company; Columbia and Puget Sound Railroad Company; Port Townsend Southern Railroad Company, and Tacoma Eastern Railroad Company.

No. 1335.

SOUTHWEST WASHINGTON LUMBER MANUFACTURERS' ASSOCIATION

vs.

NORTHERN PACIFIC RAILWAY COMPANY; CHICAGO, BURLINGTON & Quincy Railroad Company; Oregon Short Line Railroad Company; Union Pacific Railroad Company, and Oregon Railroad & Navigation Company.

These cases being at issue upon complaints and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the
39 commission having, on the date hereof, made and filed a report containing its conclusions thereon, to which report reference is hereby made:

It is ordered that the said defendants, the Northern Pacific Railway Company; Great Northern Railway Company; Chicago, Burlington & Quincy Railroad Company; Oregon Railroad & Navigation Company; Oregon Short Line Railroad Company; Union Pacific Railroad Company; Canadian Pacific Railway Company; Minneapolis, St. Paul & Sault Ste. Marie Railway Company; Rio Grande

Western Railway Company; Denver & Rio Grande Railroad Company; Chicago & Northwestern Railway Company; Chicago Great Western Railway Company; Minneapolis & St. Louis Railroad Company; Wisconsin Central Railway Company; Lake Shore & Michigan Southern Railway Company; New York Central & Hudson River Railroad Company; Bellingham Bay & British Columbia Railroad Company; Columbia & Puget Sound Railroad Company; Port Townsend Southern Railroad Company, and Tacoma Eastern Railroad Company, and each of them, be, and they are hereby, notified and required to cease and desist on or before the 15th day of August, 1908, from enforcing their present rates on interstate shipments of lumber, shingles, and other forest products from points of origin in Oregon, Washington, Idaho, Montana, and British Columbia to points in various States and Territories east and southeast thereof, excluding those points to which rates are prescribed by the commission in case No. 1054, Pacific Coast Lumber Manufacturers' Association et al. *v.* Northern Pacific Railway Company et al., decided June 2, 1908, and in case No. 1331, Western Oregon Lumber Manufacturers' Association et al. *v.* Southern Pacific Company et al., decided June 2, 1908.

It is further ordered that said defendants, and each of them, be, and they are hereby, notified and required to establish and put in force on or before the said 15th day of August, 1908, and maintain in force thereafter during a period of not less than two years rates on said interstate shipments of lumber, shingles, and other forest products from said points of origin to said points of destination which shall in no instance exceed the rates on like shipments between the same points which had been duly filed with the commission as required by law and which were in effect on October 31, 1907, subject to present minimum-weight regulations and to the following limitations:

The rates on said lumber, shingles, and other forest products from said points of origin to all points on and west of a line drawn from Pembina, N. Dak., southward through Grand Forks, N. Dak.; Moorhead and Breckenridge, Minn.; Sioux City and Council Bluffs, Iowa; St. Joseph and Kansas City, Mo.; and thence to Port Arthur, Tex., along the Kansas City Southern Railway, also including all points that now take the same rates as any of the points located on said line between and including Sioux City, Iowa, and Kansas City, Mo., and excluding those points to which rates are prescribed in case No. 1054, Pacific Coast Lumber Manufacturers' Asso. et al. *v.* Northern Pacific Ry. Co. et al., decided June 2, 1908, and in case No. 1331, Western Oregon Lumber Manufacturers' Asso. et al. *v.* Southern Pacific Co. et al., decided June 2, 1908, which were in effect on October 31, 1907, shall be restored, except that the differentials prescribed in case No. 1348, Potlatch Lumber Co. et al. *v.* Northern Pacific Ry. Co. et. al., decided June 2, 1908, shall be observed; the rates which were in effect on October 31, 1907, from said points of origin to points east of the line mentioned, and excluding all points to which the rates are now the same as to any of the points located on said line between

and including Sioux City, Iowa, and Kansas City, Mo., may be increased, in no case exceeding 5 cents per 100 pounds, and subject to the differentials prescribed in said case No. 1348.

And it is further ordered that these cases be held open for such supplemental proceedings as it may be necessary for interested parties to institute in respect to reparation.

41 X. And your orators further show that the defendant, Interstate Commerce Commission, on the 1st day of September, 1908, in said cause No. 1054, entitled "Pacific Coast Lumber Manufacturers' Association et al. vs. Northern Pacific Railway Company et al.," entered a further order as follows, to-wit:

"Upon further consideration of the record in the above-entitled cause:

"It is ordered that the order heretofore entered herein by the commission on the first day of June, 1908, and as amended by the order of the commission entered on the 27th day of June, 1908, changing the effective date of said order from Aug. 15, 1908, to Oct. 15, 1908, be further modified and amended so as to read as follows:

"It is ordered that as the defendants, the Northern Pacific Railway Company, the Northern Pacific Terminal Company of Oregon, the Oregon Railroad & Navigation Company, the Oregon Short Line Railroad Company, the Union Pacific Railroad Company, and the Denver & Rio Grande Railroad Company, have failed and neglected to voluntarily establish a through route for the transportation of forest products between the points hereinafter named, and as no reasonable or satisfactory through route now exists between said points, that said defendants last named be, and they are hereby, required, on or before the 17th day of October, 1908, to establish and maintain in operation for a period of not less than two years thereafter through routes through Portland, Ore., over their respective lines of railroad for the through transportation of fir and spruce lumber, shingles, cedar lumber, and long timbers requiring two or more cars, including with each commodity named other forest products grouped therewith in the tariff hereinafter mentioned, from all points in Washington on the line of the Northern Pacific

42 Railway Company as far north as Seattle and not east of Palmer, Wash., excluding points south and east of Seattle having rail connection with Seattle only by junction points north of Seattle, to Salt Lake and Ogden, Utah, and to all other points in Utah taking same rates as Salt Lake and Ogden on shipments of forest products from Portland, Ore., as shown by Transcontinental Freight Bureau Tariff I. C. C. No. 564 and supplements thereto.

"It is further ordered that the Northern Pacific Railway Company, the Northern Pacific Terminal Company of Oregon, the Oregon Railroad & Navigation Company, the Oregon Short Line Railroad Company, the Union Pacific Railroad Company, and the Denver & Rio Grande Railroad Company be, and they are hereby, notified and required to establish and put in force on or before the 17th day of October, 1908, and maintain for a period of two years thereafter,

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joint through rates applicable to said through routes on the forest products hereinafter named, including with each other forest products grouped therewith in the tariffs last above mentioned, from all points of origin on said through routes to all destinations above named, which said joint through rates shall in no case exceed the following scale in cents per hundred po'nds:

Fir and spruce lumber in carloads	$0.40
Shingles, in carloads	.50
Cedar lumber	.50
Long timbers requiring two or more cars	.50

subject, however, to present minimum weight regulations.

"It is further ordered that in establishing joint rates on the forest products above named applicable to the through routes hereinbefore ordered between the respective points of origin and destinations mentioned, said defendants shall in no case make said joint through rates more than 2½ cents per 100 pounds higher than the rates on the same forest products from Portland, Ore., to said destinations.

"It is further ordered that the above order does not consti-
43 tute sanction for or endorsement of the establishment of higher rates for a shorter haul than for a longer haul in the same direction via the same line when the shorter is included within the longer.

"It is further ordered that said defendants are hereby authorized to make said joint rates effective upon three days' notice to the public and the commission, given in the manner required by law. The joint tariff must contain notation that it was issued under the authority hereby granted and must refer to the title and number of this case.

"It is further ordered that as to the establishment of a through route and joint rate applicable to the movement of lumber and shingles from western Washington through said Portland, Ore., over the lines of the Northern Pacific Railway Company, the Great Northern Railway Company, and the Union Pacific system to other named eastern destinations, the complaint in this proceeding be, and it is hereby, dismissed."

And your orators further show that the defendant, Interstate Commerce Commission, on the 1st day of September, 1908, in said cause No. 1327, entitled "Oregon & Washington Lumber Manufacturers' Association et al. v. Union Pacific Railroad Company et al.," entered a further order as follows, to-wit:

"Upon further consideration of the record in the above-entitled cause:

"It is ordered that the order heretofore entered by the commission in said cause on the second day of June, 1908, and as amended by the order of the commission on the 27th day of July, 1908, changing the effective date thereof from August 15th to October 15th, 1908, be, and the same is, hereby further modified and amended by adding thereto the following:

"It is further ordered that permission is hereby granted to defendant carriers to establish on shingles, cedar lumber, and long tim-

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bers requiring two or more cars, including with each articles grouped therewith, from points of origin to destinations west of the
44 Pembina-Port Arthur line, as defined in the original order herein, as to which no such differential, or a differential of less than 10 cents per 100 pounds, existed prior to November 1, 1907, differentials not exceeding in any instance 10 cents per 100 pounds above the rates on fir lumber between the same points, provided that the differentials prescribed in Case No. 1348, Potlatch Lumber Company et al. v. Northern Pacific Railway Company et al., must be observed.

"It is further ordered that the above permission does not constitute sanction for or endorsement of the establishment of higher rates for a shorter haul than for a longer haul in the same direction, when the shorter is included within the longer."

And your orators further show that the defendant Interstate Commerce Commission, on the first day of September, 1908, in said causes No. 1329 and 1335, entitled respectively "Pacific Coast Lumber Manufacturers' Association et al. v. Northern Pacific Railway Company et al.," and "Southwest Washington Lumber Manufacturers' Association v. Northern Pacific Railway Company et al.," entered a further order as follows, to-wit:

"Upon further consideration of the record in the above-entitled causes:

"It is ordered that the order heretofore entered by the commission in said causes on the second day of June, 1908, and as amended by the order of the commission on the 27th day of July, 1908, changing the effective date thereof from August 15th to October 15th, 1908, be, and the same is, hereby further modified and amended by adding thereto the following:

"It is further ordered that permission is hereby granted to defendant carriers to establish on shingles, cedar lumber, and long timbers, requiring two or more cars, including with each articles grouped therewith, from points of origin to destinations west of the Pembina-
Port Arthur line, as defined in the original order herein, as
45 to which no such differential, or a differential of less than 10 cents per 100 lbs., existed prior to November 1, 1907, differentials not exceeding in any instance 10 cents per 100 pounds above the rates on fir lumber between the same points, provided that the differentials prescribed in case No. 1348, Potlach Lumber Company et al. v. Northern Pacific Railway Company et al., must be observed.

"It is further ordered that the above permission does not constitute sanction for or endorsement of the establishment of higher rates for a shorter haul than for a longer haul in the same direction, when the shorter is included within the longer."

XI. Your orators further show that the defendant Interstate Commerce Commission, on the 25th day of September, 1908, in said causes No. 1327, entitled "Oregon & Washington Lumber Manufacturers' Association et al. v. Union Pacific Railroad Company et al.," and No. 1329, entitled "Pacific Coast Lumber Manufacturers' Association

et al. v. Northern Pacific Railway Company et al.," and No. 1335, entitled "Southwest Washington Lumber Manufacturers' Association v. Northern Pacific Railway Company et al.," entered a further order as follows, to wit:

"Upon further consideration of the record in the above entitled causes:

"It is ordered that the order of September 1, 1908, modifying the original order herein be, and it is hereby, amended and modified so that it will read as follows:

"It is ordered that the order heretofore entered by the commission in said causes on the 2d day of June, 1908, and as amended by the order of the commission on the 27th day of July, 1908, changing the effective date thereof from August 15 to October 15, 1908, be, and the same is hereby, further modified and amended by adding thereto the following:

46 "It is further ordered that permission is hereby granted to defendant carriers to establish on shingles, cedar lumber, and long timbers, requiring two or more cars, including with each articles grouped therewith, from points of origin to destinations west of the Pembina-Port Arthur Line, as defined in the original order herein, as to which no such differential, or a differential of less than 10 cents per 100 pounds, existed prior to November 1, 1907, differentials not exceeding in any instance 10 cents per 100 pounds above the rates on fir lumber between the same points, provided that the differentials prescribed in case No. 1348, Potlatch Lumber Company et al. v. Northern Pacific Railway Company et al. must be observed.

"It is further ordered that all increases made under this order in said differentials above those in effect on October 31, 1907, shall become effective on October 15, 1908, and that as to all shipments which moved subsequent to October 31, 1907, and prior to October 15, 1908, the rates prescribed in the original order herein shall be applied.

"It is further ordered that the above permission does not constitute sanction for or endorsement of the establishment of higher rates for a shorter haul than for a longer haul in the same direction, when the shorter is included within the longer."

XII. Your orators further show that the effect of the order so entered by the defendant in said cause 1348, if enforced, will be to reduce the rates fixed by the tariffs of your orators for the transportation of lumber, shingles, and forest products from points within the States of Washington, Oregon, Montana, and Idaho to points in the other States above mentioned, substantially five cents (5c) a hundred pounds, and in some instances more than five cents a hundred pounds.

47 XIII. Your orators aver and charge that in making said order and endeavoring to establish said rates said commission acted without warrant of law; that the said act of 1887 to regulate commerce, and the several acts amendatory thereof and supplementary thereto, particularly the amendment of June 29, 1906, popularly

known as the "Hepburn bill," under which said commission professed to act, are in violation of the Constitution of the United States in that they profess to confer upon said commission executive, legislative, and judicial powers. More specifically pleading in this behalf, your orators say: All through said acts administrative powers are conferred upon the commission. In section 15 the commission is authorized to act as a court, to take judicial cognizance of complaints filed for damages, and, after hearing, to award damages, which award establishes a prima facie right in the complainant and which no carrier against whom the award has been made can resist except by assuming the burden of proof and overthrowing the prima facie effect of the commission's award. The award can be resisted only under penalty of the carriers paying not only the usual costs of suit but an attorney's fee to complainant in addition if cast in the action.

By section 15 of said act said commission is authorized and empowered, after a hearing upon complaint, whenever in its opinion any rate or charge demanded, charged, or collected by any carrier subject to the act is unjust or unreasonable, or unjustly discriminatory, or unduly preferential or prejudicial, to determine and
48 prescribe what will be the just and reasonable rate or charge to be thereafter observed in such case as the maximum to be charged, and to make an order that the carrier shall cease and desist from demanding, charging, or collecting the rate or charge complained of and condemned by said commission, and shall not thereafter, for a period not exceeding two years, publish, demand, or collect any rate or charge in excess of the maximum rate or charge so prescribed by said commission as a substitute for the rate or charge condemned.

Under the provisions of said section and of section 13 of the act, in which the complaint containing a statement of the charges made is more particularly provided for, the commission is empowered to proceed, and the proceeding itself is against the particular carrier or carriers, and such carrier or carriers only as are charged with unreasonableness in the matter of its or their rates; and upon hearing and trial of such carrier or carriers in said proceeding the said commission, under the aforesaid sections, is authorized to adjudge the rate or charge of said particular carrier or carriers to be unreasonable, and, as a consequence thereof, to adjudge against said particular carrier or carriers another different and lower rate as the maximum to be charged by such particular carrier or carriers in such case for a period not exceeding two years. Such proceedings, hearing, trial, determination, and judgment involve and require the exercise of judicial power by the said commission, and it is not competent to Congress to invest said commission with such power; and any investiture, distribution, or exercise of such power in, to, or by said commission is in violation of the Constitution of the United States,
and particularly so much thereof as provides for the distribu-
49 tion and exercise of the judicial authority of the United States; and herein reference is made to section 1 of Article

III of the Constitution of the United States; and the commission has and possesses no such judicial power.

Further pleading as to that provision of section 15 of the act to regulate commerce as amended, which declares that the commission shall prescribe what shall be the reasonable rate or rates, charge or charges, to be observed as the maximum to be charged, your orators say this provision is contrary to the Constitution of the United States, and especially to section 1, Article I, above quoted, in that, by that article all legislative power is confined to the Congress of the United States. The prescribing of a maximum rate which carriers may charge is a legislative function. Congress has not prescribed a maximum rate to govern in the cases provided for, but by said act delegates this power to the commission, and in doing so places in its hands legislative power.

XIV. Your orators aver that in and by section 1 of the said act to regulate commerce it is provided that all charges made by any common carrier subject to the act, for any service rendered or to be rendered in the transportation of property, or in connection therewith, shall be just and reasonable, and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful. That your orators, as the owners and operators of the railroads herein above described, and the franchises, equipment, and appurtenances connected with such railroads, are entitled to the possession, management, and beneficial use thereof, and are authorized to
50 establish rates for the transportation of freight thereover, subject only to the provision that such rates shall be just and reasonable. In and by section 15 of the said act the Interstate Commerce Commission is authorized and empowered, after hearing upon complaint, whenever it shall be of the opinion that any of the rates or charges demanded or charged or collected by any common carrier for the transportation of property as defined in the first section of the act are unjust or unreasonable or otherwise in violation of any of the provisions of the act to determine and prescribe what will be a just and reasonable rate or rates, charge or charges, to be thereafter observed in such case as the maximum to be charged, and to make an order that the carriers shall cease and desist from such violation to the extent that the commission find the same to exist, and shall not thereafter publish, demand, or collect any rate or charge for such transportation in excess of the maximum rate or charge so prescribed. That in and by said section 15 of said act it is provided that all orders of the commission prescribing rates shall take effect within a reasonable time, and not less than 30 days after the making of the same, and shall continue in force for such period, not exceeding two years, as established and prescribed by the order of the commission, unless the same shall be suspended or modified or set aside by the commissioners, or be suspended or set aside by a court of competent jurisdiction. That in and by the 16th section of the said act it is provided that any carrier, or any officer or agent of any carrier, who knowingly fails or neglects to obey any order of the commission pre-

scribing rates as provided in said section of the act shall for-
51 feit to the United States the sum of $5,000 for each offense, and that each distinct violation shall be deemed a separate offense, and in case of continuing violation each day shall be deemed a separate offense.

Your orators aver that the present rates attempted to be set aside by said order, but fixed and established by your orators for the transportation of lumber, shingles, and forest products from points aforesaid mentioned in the order of the said commission, and each of the said rates are and will be for more than three years hence low, just, and reasonable rates for the service performed in the transportation of said commodities between said places and each of them, and that the rates prescribed by the commission in and by its order are, and each of said rates is and will be for more than three years hence, unjust and unreasonable for the service performed in the transportation of lumber, shingles, and forest products, and are and will be inadequate compensation to your orators for the service rendered.

Your orators aver that by Article V of the amendments to the Constitution of the United States your orators have the right to a judicial investigation in a court by due process of law, under the forms and with the machinery provided by the wisdom of successive ages for the investigation judicially of the truth of the matter in controversy of the question as to the reasonableness of the said rates so fixed and established by your orators, and of the question as to the reasonableness of the said rates so fixed and established by the said commission as aforesaid, and of each of said questions.

That the attempt of the commission in and by said order sought to be set aside herein, to set aside and annul the rates established
52 by your orators, and the establishing of the said rates prescribed by said orders and each of them by the said commission, against the will of your orators and depriving your orators thereof without due process of law, in violation of Article V of the amendments to the Constitution of the United States; and that the making of the said order of the commission herein set out was pro tanto a taking and depriving the company of its property without due process of law, in violation of Article V of the amendments to the Constitution of the United States, and thereby void and of no effect.

Your orators further aver that the attempt of sections 15 and 16 of the said interstate commerce act to make any order of the commission prescribing rates to be charged for the transportation of property became effective of its own force prior to a hearing in a court of justice of the question of the reasonableness of the rates prescribed by said order, and said sections 15 and 16 in that regard are void for the reason that in and by section 1, Article III of the Constitution of the United States, all judicial power is conferred upon a Supreme Court of the United States and such inferior courts as Congress may establish, and the judges of said Supreme Court

and such inferior courts shall hold office during good behavior, and the said commission has no power to prescribe any time upon which any order of the said commission prescribing rates for the transportation of property to take effect, and that the said order of the said commission is void and of no effect.

That section 16 of said act is unconstitutional and void in that it is therein provided that your orators and each of them, and any officer or agent of your orators, knowingly failing or neglecting

53 to obey the said order of the commission herein set forth, shall forfeit to the United States the sum of $5,000 for each day that your orators or said officers or agents fail to obey said order, notwithstanding that the question of the reasonableness of the rates established by the said order has not been judicially investigated by due process of law in any court of justice, and in that said section makes said order a finality unless suspended by the commission or by some court of competent jurisdiction, and subjects your orators to penalties and forfeitures as therein provided, and deprives your orators of their property without due process of law, contrary to Article V of the amendments to the Constitution of the United States, and the force and effect of said order sought to be enjoined and set aside herein has been to compel your orators, in order to prevent their property from being forfeited through the operation of such penalties and to save the agents of your orators from being subjected to such penalties (notwithstanding such penalties are only imposed because of said order of said commission attempting to prescribe and establish such rates) to publish and put into effect on October 15, 1908, the unreasonably low rates so attempted to be prescribed by said commission in and by said order, whereby your orators aver that their property has been and is now being taken from them against their will, and without due process of law, and without their having had a day in court and the right to a judicial investigation by a court under due process of law for the determination of the truth of the matter in controversy before said commission.

54 XV. Your orators further show that the only authority sought to be vested in the defendant, Interstate Commerce Commission, to fix rates for the transportation of property over the lines of your orators' railways is conferred by said section fifteen of said amended act of Congress, approved June 29, 1906, by the terms whereof it is provided that whenever the said commission shall, after a full hearing, be of the opinion that any of the rates or charges demanded, charged, or collected by any common carrier or carriers, subject to the provisions of said act for the transportation of property, are unjust or unreasonable, it shall be authorized "to determine and prescribe what will be the just and reasonable rate or rates, charge or charges to be observed in such case as the maximum to be charged," and your orators further show that the said order so entered in said cause No. 1348 is further unauthorized and void, for the reason that your orators have at no time prescribed rates for the transportation of lumber, shingles, or forest products between the

points named in said order in excess of charges which are just and reasonable. And furthermore, upon the hearing before the defendant in said two causes in which said order was so entered, no evidence was considered or offered which in any wise showed or tended to show that the rates complained of therein were excessive, unjust, or unreasonable, and the defendant, Interstate Commerce Commission, entered this said order without any justification therefor, and without any evidence or finding of fact that said rates so fixed by said defendant were excessive, unjust, or unreasonable.

55 XVI. Your orators further show that the rates for the transportation of lumber, shingles, and forest products from points within to points without the States of Washington, Oregon, Montana, and Idaho, as fixed by the said tariffs, so in effect, on October 21, 1907, were substantially the same rates that were fixed by your orators in the year 1893 and solely by reason of the fact that said rates had been long continued was the conclusion reached by the defendant, Interstate Commerce Commission, that the rates complained of in said cause No. 1348, which were and are higher than the rates theretofore in effect, were unreasonable and unjust, and solely by reason of this fact was said order so entered by the commission, but your orators show, that it was established by uncontradicted evidence upon the hearing before the commission that the circumstances and conditions which existed at the time said previous rates were established did not exist on November 1st or 2nd, 1907, and did not exist at the time of said hearing, and had not existed for more than three years prior thereto. That is was established at the hearing before the defendant commission by uncontradicted evidence that at the time said previous rates were established the condition of the lumber market in the United States was such that the lumber product of the States of Washington, Oregon, Montana, and Idaho could not move to other States in any considerable quantity at rates higher than those so established, but that the conditions in this respect have been gradually changing by reason of the exhaustion of the timber supply in Michigan, Minnesota, and Wisconsin and the rapid

56 increase in the value of the yellow pine product of the Southern States, so that it was established at said hearing by uncontradicted evidence that for a period of at least three years before November 1st, 1907, the occasion for maintaining rates so low as those established in 1893 had ceased. And your orators further aver that the said defendant commission in the determination of the issues involved in said complaint expressly found that in and prior to the year 1893 the lumber interests in the States of Washington, Oregon, Montana, and Idaho were in their infancy and except for purely local consumption mills located therein disposed of their surplus at points reached by water transportation, and that the volume of business was small for a considerable time even after the railroads of your orators reached the coast; that prior to the year 1893 the rates on lumber and forest products from said States to Omaha, St. Paul, and other eastern destinations were higher than the rates established

in 1893, and that under said higher rates little, if any, of the lumber in said States moved eastward to said eastern destinations; at that time and for several years thereafter and until the practical disappearance of competition with white pine lumber manufactured in Wisconsin, Minnesota, and Michigan, manufacturers of lumber in Washington, Oregon, Montana, and Idaho were unable to meet the competition of southern yellow pine and northern white pine in the States hereinbefore referred to, but that following upon the reduction in said rates inaugurated in 1893, the lumber interests in said States of Oregon, Washington, Montana, and Idaho increased enormously and many mills were built in the interior, so that at and for several years prior to the hearing of said complaint shipments were
57 and had been constantly made in large amounts eastward by the lines of your orators to eastern markets, amounting to a large percentage of the output of said mills; and your orators further aver that it was expressly found to be a fact by the defendant commission that during the period of time that elapsed after the reduction in said rates in 1893 down to the time of said hearing, in the States of Oregon, Washington, Montana, and Idaho, the price of manufactured lumber had greatly increased with increasing profits to the manufacturer, resulting from the market thus secured to him through said reduced rates, and the general advance in price in said markets during the years aforesaid, and the generally prosperous conditions surrounding the manufacture and sale of lumber in the States hereinbefore referred to, whereby your orators aver that the commission found that each and every of the conditions surrounding the lumber industry had completely changed from the time said rates were established in 1893, and that the prosperous condition of said industry on and for more than three years prior to November 1, 1907, did not require or justify the further maintenance of rates so low as those established in 1893, under the circumstances aforesaid. It was also shown by uncontradicted evidence at said hearing that your orators established and maintained the rates in effect before November 1st, 1907, for the reason that in 1893, and for many years thereafter, the great volume of traffic moving over your orators' lines of railway was west-bound, and the States of Washington, Oregon, Montana, and Idaho, and the neighboring territory furnished insufficient traffic to load east-bound the cars employed in moving the west-bound traffic, and that the rates on lumber, shingles, and forest
58 products were so fixed and at an abnormally low point to furnish loads for cars which would have otherwise moved east without revenue-producing freight, but that for some time before November 1st, 1907, the conditions had so changed that it was necessary to haul empty cars to the States of Washington, Oregon, Montana, and Idaho in order to furnish facilities for the movement of lumber, shingles, and forest products. It was also shown at said hearing by uncontradicted evidence that every other important element in the cost of transporting the commodities in question had greatly increased over the cost in 1893 and subsequent years.

Your orators further show that the conditions with respect to the transportation of the commodities in question so existing on November 1st, 1907, and for several years before that time, continued to the time of said hearing, as was shown by the uncontradicted evidence there produced, and, as your orators are informed and believe, will continue for at least a period of two years from October 15, 1908. Your orators further show that notwithstanding the fact that it was so conclusively established at said hearing before the defendant commission that such rates maintained by your orators before November 1st, 1907, were established and maintained under conditions wholly different from those existing at the time the rates complained of took effect and at the time of the hearing, the defendant, Interstate Commerce Commission, held as a matter of law that the continuance of said previous rates raised a presumption that such higher rates were unjust and unreasonable, wherein said commission acted erroneously and through a mistake and under a misapprehension of the law and without authority.

59 XVII. Your orators further show that the rates so fixed by the tariffs so becoming effective on November 1st and 2nd, 1907, are lower than the rates charged for any like service by any carriers in the United States, and lower than rates heretofore fixed by the defendant, Interstate Commerce Commission, for like services. The rates so fixed by said order are unremunerative and confiscatory in that while it is not possible to accurately compute the actual cost involved in transporting a car of lumber from the States of Washington, Oregon, Montana, and Idaho to eastern destinations, nevertheless it is possible with substantial accuracy to determine whether or not the transportation of lumber aforesaid may be conducted without loss under the rates so fixed by said order, and your orators, upon information and belief, aver that the rates so fixed by said order are not and will not be sufficient to pay the cost of conducting the transportation aforesaid and any just or fair return upon the value of the property used in said transportation, and said rates so fixed by said order aforesaid bear no fair or just relation to the rates on other traffic moving over your orators' lines of railway, and the enforcement of said order of the defendant will impose an undue and unreasonable burden not only upon your orators but upon the shippers of other commodities.

Your orators further show that the enforcement of said order of the defendant will deprive your orators of revenue from the transportation of lumber, shingles, and forest products to which they would be entitled under the rates fixed by said tariffs so filed,

60 published, and posted to an amount of more than one hundred thousand dollars per year, and each of your orators, by the enforcement of said order, will be deprived of revenue in a sum greatly in excess of two thousand dollars per year.

XVIII. Your orators, therefore, pray that a decree be entered herein setting aside and annulling the said order of the defendant, Interstate Commerce Commission, in said cause No. 1348 and per-

petually enjoining the enforcement of said order, and perpetually enjoining the defendant, and its members, their agents, servants, and representatives, from enforcing said order and from taking any steps or instituting any proceedings for the enforcement of said order.

And your orators further pray that such other and further relief be granted in the premises as justice and equity may require.

Your orators further pray that your honors grant unto your orators a writ of subpœna, directed to said Interstate Commerce Commission, commanding it at a certain day and under a certain penalty therein to be specified to be and appear before your honors in this honorable court and then and there full, true, and complete answer make to all and singular the premises, but not under oath (an answer under oath being hereby expressly waived), and to stand to and abide such order and decree herein as to your honors shall seem meet and agreeable to equity and good conscience.

And your orators will every pray.

Great Northern Railway Company, by Robt. I. Farrington, 2nd vice president (corporate seal); Northern Pacific Railway Company, by J. M. Hannaford, 2nd vice president (corporate seal); Chicago, Burlington & Quincy Railroad Company, by D. Miller, 1st vice president; Union Pacific Railroad Company, by J. C. Stubbs, its traffic director; Oregon Short Line Railroad Company, by J. C. Stubbs, its traffic director; Oregon Railroad & Navigation Company, by J. C. Stubbs, its traffic director; Southern Pacific Company, by J. C. Stubbs, its vice president; James B. Kerr, Hale Holden, of counsel for Great Northern Railway Company, Northern Pacific Railway Company, Chicago, Burlington & Quincy Railroad Company; W. W. Cotton, F. C. Dillard, of counsel for Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad & Navigation Company, and Southern Pacific Company; James B. Kerr, Hale Holden, solicitors for complainants, Great Northern Railway Company, Northern Pacific Railway Company, Chicago, Burlington & Quincy Railroad Company; W. W. Cotton, P. L. Williams, W. F. Herrin, P. F. Dunne, N. H. Loomis, F. C. Dillard, solicitors for complainants, Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad & Navigation Company, and Southern Pacific Company.

61

62

STATE OF MINNESOTA,

County of Ramsey, ss:

R. I. Farrington, being first duly sworn, on oath states that he is the second vice president of the Great Northern Railway Company

in the above entitled cause. Affiant further states that he has read the foregoing amended bill of complaint, and that the allegations therein contained are true, except where made upon information and belief, and where so made affiant states that he believes them to be true.

ROBT. I. FARRINGTON.

Subscribed and sworn to before me this 20th day of October, A. D. 1908.

[SEAL.] EARLE W. MCELROY,
Notary Public, Ramsey County, Minnesota.

My commission expires April 14, 1911.

63 STATE OF MINNESOTA,
County of Ramsey, ss:

J. M. Hannaford, being first duly sworn, on oath states that he is the 2nd vice president of the Northern Pacific Railway Company in the above-entitled cause. Affiant further states that he has read the foregoing amended bill of complaint, and that the allegations therein contained are true except where made upon information and belief, and where so made affiant states that he believes them to be true.

J. M. HANNAFORD.

Subscribed and sworn to before me this 20th day of October, A. D. 1908.

[SEAL.] W. T. FRANCIS,
Notary Public,
Ramsey County, Minnesota.

My commission expires April 5, 1911.

STATE OF ILLINOIS,
County of Cook, ss:

D. Miller, being first duly sworn, on oath states that he is the 1st vice president of the Chicago, Burlington & Quincy Railroad Company in the above-entitled cause. Affiant further states that he has read the foregoing amended bill of complaint, and that the allegations contained therein are true except where made upon information and belief, and where so made affiant states that he believes them to be true.

D. MILLER.

Subscribed and sworn to before me this 19th day of October, A. D. 1908.

[SEAL.] J. H. PETTIBONE,
Notary Public.

64 STATE OF ILLINOIS,
County of Cook, ss:

J. C. Stubbs, being first duly sworn, on oath states that he is the traffic director of the Union Pacific Railroad Company in the above-entitled cause. Affiant further states that he has read the foregoing amended bill of complaint, and that the allegations therein contained

are true except where made upon information and belief, and where so made affiant states that he believes them to be true.

J. C. STUBBS.

Subscribed and sworn to before me this 19th day of October, A. D. 1908.

[SEAL.] WILLIAM A. RAWSON,
Notary Public.

STATE OF ILLINOIS,
County of Cook, ss:

J. C. Stubbs, being first duly sworn, on oath states that he is the traffic director of the Oregon Short Line Railroad Company in the above-entitled cause. Affiant further states that he has read the foregoing amended bill of complaint, and that the allegations therein contained are true except where made upon information and belief, and where so made affiant states that he believes them to be true.

J. C. STUBBS.

Subscribed and sworn to before me this 19th day of October, A. D. 1908.

[SEAL.] WILLIAM A. RAWSON,
Notary Public.

65 STATE OF ILLINOIS,
County of Cook, ss:

J. C. Stubbs, being first duly sworn, on oath states that he is the traffic director of the Oregon Railroad & Navigation Company in the above-entitled cause. Affiant further states that he has read the foregoing amended bill of complaint, and that the allegations therein contained are true except where made upon information and belief, and where so made affiant states that he believes them to be true.

J. C. STUBBS.

Subscribed and sworn to before me this 19th day of October, A. D. 1908.

[SEAL.] WILLIAM A. RAWSON,
Notary Public.

STATE OF ILLINOIS,
County of Cook, ss:

J. C. Stubbs, being first duly sworn, on oath states that he is the vice president of the Southern Pacific Company in the above-entitled cause. Affiant further states that he has read the foregoing amended bill of complaint, and that the allegations therein contained are true except where made upon information and belief, and where so made affiant states that he believes them to be true.

J. C. STUBBS.

Subscribed and sworn to before me this 19th day of October, A. D. 1908.

[SEAL.] WILLIAM A. RAWSON,
Notary Public.

(Endorsed:) Filed October 20th, 1908. Henry D. Lang, clerk.

66 Thereafter and on November 17th, 1908, the following amended bill of complaint was filed in said cause, to wit:

67 In the Circuit Court of the United States for the District of Minnesota, Third Division.

GREAT NORTHERN RAILWAY COMPANY, Northern Pacific Railway Company, Chicago, Burlington and Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad and Navigation Company, and Southern Pacific Company, complainants, *vs.* THE INTERSTATE COMMERCE COMMISSION, defendant.	In equity. No. 885.

Amendment to amended bill of complaint.

To the honorable judges of the Circuit Court of the United States within and for the District of Minnesota:

Great Northern Railway Company, a corporation organized under the laws of the State of Minnesota; Northern Pacific Railway Company, a corporation organized under the laws of the State of Wisconsin; Chicago, Burlington and Quincy Railroad Company, a corporation organized under the laws of the State of Illinois;

68 Union Pacific Railroad Company, a corporation organized under the laws of the State of Utah; Oregon Short Line Railroad Company, a corporation organized under the laws of the State of Utah; Oregon Railroad and Navigation Company, a corporation organized under the laws of the State of Oregon; and Southern Pacific Company, a corporation organized under the laws of the State of Kentucky, complainants herein, bring this, their amendment to their amended bill, against the defendant, the Interstate Commerce Commission, established and existing under and by virtue of an act of the Congress of the United States.

And thereupon your orators complain and make amendment to their said amended bill of complaint herein as follows:

I. After the words "and subsequent years," in line 17 on page 27 of the amended bill of complaint, the same being in paragraph 16 thereof, insert:

"And you orators further aver that the defendant commission expressly found in its determination of said complaint that in the year 1893, when said low rates were established, the empty-car movement on the lines of your orators was east-bound, and that at that time and for some years thereafter the great volume of traffic moving over your orators' lines of railway was west-bound; but your orators aver that said commission also found that this condition in and about the

transportation of lumber from the States of Oregon, Washington, Montana, and Idaho had likewise changed since said rates were established in that at and for several years prior to the hearing of said complaint the direction of the empty-car movement on the
69 lines of your orators has been reversed and the same is now west-bound, and your orators are now and for several years prior to November 1, 1907, have been compelled to haul westbound large numbers of empty cars for the purpose of furnishing equipment in the States of Oregon, Washington, Montana, and Idaho for the loading of lumber east-bound into the States hereinbefore referred to, where said lumber is now sold. And your orators further aver that the commission not only expressly found that the volume of lumber shipped during the last few years over the lines of your orators east-bound had enormously increased and that the lumber interests engaged in said traffic have been extraordinarily prosperous in the past few years, but also found that the density of traffic on the lines of your orators has increased to such an extent that it is more than can be advantageously handled on single-track roads such as the lines of your orators practically are, and that because of the increase in density of traffic aforesaid your orators have been compelled to, and are now engaged in, constructing double-track extensions in some cases, in order more advantageously and expeditiously to handle this increased traffic. Your orators further aver that the commission found that the expense of operating railways has increased greatly in the past few years, especially the cost of labor and materials, over and above the expense of operation as it existed at and for a few years after the year 1893, and further found that the increased traffic of your orators has required additional working force and equipment, thus recognizing and establishing the contention of your orators that in the matter of the transportation of lumber from the States of
70 Oregon, Washington, Montana, and Idaho the conditions had greatly changed from the conditions in force at the time said rates were established in 1893."

Wherefore your orators pray, as they have before prayed in their amended bill of complaint, that a decree be entered herein setting aside and annulling the said order of the defendant Interstate Commerce Commission, in said cause No. 1348, and perpetually enjoining the enforcement of said order, and perpetually enjoining the defendant, and its members, their agents, servants, and representatives, from enforcing said order and from taking any steps or instituting any proceedings for the enforcement of said order.

And your orators further pray, as in their amended bill of complaint, that such other and further relief be granted in the premises as justice and equity may require.

Your orators further pray that said respondent may answer, but not under oath (such oath being hereby waived), according to the practice of this court, all and singular the matters stated and charged in said amended bill of complaint, and those hereinbefore stated and charged in this your orators' amendment to said amended bill of

complaint, and to stand to and abide such order and decree herein as to your honors shall seem meet and agreeable to equity and good conscience.

F. C. DILLARD,
JAMES B. KERR,
HALE HOLDEN,
Solicitors for Complainants.
HALE HOLDEN,
Of Counsel.

(Endorsed:) Filed November 17, 1908. Henry D. Lang, clerk.

71 Thereafter and on December 16th, 1908, the following demurrer and answer of Interstate Commerce Commission was filed in said cause, to-wit:

72 In the Circuit Court of the United States for the District of Minnesota, Third Division.

GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC Railway Company, Chicago, Burlington and Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad and Navigation Company, and Southern Pacific Company, complainants, *vs.* THE INTERSTATE COMMERCE COMMISSION, DEFENDANT.	In Equity. No. 885.

Demurrer and answer of Interstate Commerce Commission, abovenamed defendant, to the amended bill of complaint of the abovenamed complainants.

(1) Demurrer.

This defendant, the Interstate Commerce Commission, by protestation, not confessing or acknowledging all or any of the matters and things in the said amended bill contained to be true in such manner and form as the same are therein set forth and alleged, as to so
73 much of the said amended bill (Paragraph XIII and Paragraph XIV, excepting the clause on page 35 beginning, "Your orators aver, etc.") as seeks to aver that the act to regulate commerce as amended June 29, 1906, is unconstitutional and void, does demur thereto, and for cause of demurrer shows that said complainants have not, as appears by said portions of their said amended bill, made out any title to any equitable relief.

Defendant specially demurs to said portion of complainants' amended bill and assigns as such grounds of demurrer:

I. That the power to prescribe maximum rates to be charged in the future on interstate traffic has constitutionally been delegated by Congress to this defendant.

II. That the Interstate Commerce Commission, in hearing and considering evidence and arriving at conclusions regarding the reasonableness of rates to be established, proceeds in accordance with due process of law and does not therein or thereby exercise the judicial power invested by the Constitution in the courts of the United States.

III. That in entertaining complaints for reparation and in granting orders for the payment of money thereon, which orders
74 are prima facie evidence of damages owing to complainant before this defendant, the Interstate Commerce Commission does not exercise such a purely judicial function as is forbidden by the Constitution.

IV. That the provision of the statute which authorizes the Interstate Commerce Commission to entertain complaints for reparation and to grant orders for the payment of money thereon is entirely separable and distinct from the remaining provisions of the act to regulate commerce as amended, and does not in anywise affect the constitutionality or validity of the remaining portions of the act.

V. That whether or not in entertaining complaints for reparation and in granting orders for the payment of money thereon the Interstate Commerce Commission does exercise such a purely judicial function as is forbidden by the Constitution can not be drawn in question in this case, for that there is no allegation that this defendant has exercised such power.

VI. That the portion of the act to regulate commerce, as amended, which provides for penalties for willful disobedience to the orders of the commission is not offensive to the fifth amendment to the Constitution.

75 VII. That the portion of the act to regulate commerce which provides for penalties for willful disobedience to the orders of the commission is entirely separable from the remaining portions of the statute and does not in any wise affect the constitutionality or validity of the remaining portions of the statute.

VIII. That whether or not the penalties prescribed in the act to regulate commerce, as amended, for willful disobedience to the orders of the commission would render the statute in that regard offensive to the fifth amendment to the Constitution can not be drawn in question in this case, for that it affirmatively appears that the complainants while seeking relief in this court are observing and obeying the said orders of the commission and are not exposed to prosecution for penalties or forfeitures.

IX. That in providing for penalties against common carriers violating the act to regulate commerce by disobeying the orders of the said commission the statute does not offend the fifth amendment to the Constitution, for that the statute expressly authorizes a suit in the Circuit Court of the United States to enjoin, suspend, or set aside the orders of the commission either before or after such orders
76 become effective, and said statute further confers jurisdiction and lays the venue for the judicial hearing according to estab-

lished methods before any penalties or forfeitures can be declared, thereby preserving due process of law.

Wherefore, for divers other good causes for demurrer appearing in the said amended bill, defendant prays the judgment of this honorable court whether it shall be compelled to make any answer to such parts of the said amended bill as it has hereinbefore demurred to.

(2) Answer.

And the defendant, the Interstate Commerce Commission, not waiving the said several demurrers, but wholly relying and insisting thereon, for answer to so much of the residue of the said amended bill as it is advised that it is material or necessary for it to make answer unto, answering, says:

I. Defendant admits the allegations of Paragraph I.

II. Defendant admits the allegations of Paragraph II.

III. Defendant admits the allegations of Paragraph III.

77 IV. Defendant admits the allegations of Paragraph IV.

V. Defendant admits the allegations of Paragraph V that the rates named in said tariffs so filed, published, and posted thereupon became and were the only lawful rates for the transportation of the various commodities comprised within said four groups from each and all the points in the States of Washington, Oregon, Montana, and Idaho, named in said tariffs, to each and all the points of destination in said other States named in said tariffs; but defendant denies that the rates named in said tariffs were on November 1, 1907, ever since have been, and now are neither unreasonable nor unjust; and defendant further denies that said rates will continue to be neither unreasonable nor unjust for a period of two years from October 15, 1908.

VI. Defendant admits the allegations of Paragraph VI.

VII. Defendant admits the allegations of Paragraph VII.

VIII. Defendant admits the allegations of Paragraph VIII.

78 IX. Defendant admits the allegations of Paragraph IX.

X. Defendant admits the allegations of Paragraph X.

XI. Defendant admits the allegations of Paragraph XI.

XII. Defendant admits the allegations of Paragraph XII that the effect of the orders so entered by the defendant in said cause 1348 if enforced will be to reduce the rates established by complainants for the transportation of lumber, shingles, and forest products from points within the States of Washington, Oregon, Montana, and Idaho to many points in other States 5 cents per 100 pounds, and in some instances more than 5 cents per 100 pounds; but defendant avers that the net result of the enforcement of said orders in said cause will be to leave in full force and effect rates to most of the points embraced in said order which are materially higher than the rates which hitherto had been voluntarily charged by complainants for many years previous to November 1, 1907.

XIII. (Entire paragraph in amended bill of complaint covered by special demurrer.)

79 XIV. (All of Paragraph XIV in the amended bill of complaint is covered by special demurrer except the clause on page 35 beginning "Your orators aver, etc.")

Defendant denies the allegations of Paragraph XIV that the rates in effect prior to the effective date of the orders complained of for the transportation of lumber, shingles, and forest products between the points mentioned in said orders, and that each of the said rates are, and will be for more than three years hence, low, just, and reasonable rates within the meaning of the fifth amendment to the Constitution, which prohibits the taking of property without just compensation or without due process of law.

Defendant avers that this court can not and will not inquire into the matter as to whether said rates are just and reasonable within any other meaning; but if this court holds it has jurisdiction to make such inquiry, defendant denies that said rates are in any respect just and reasonable.

Defendant denies that the rates prescribed by it in and by its orders are or that any of them is or will be for more than three years hence, unjust and unreasonable within the meaning of the fifth amendment to the Constitution, which prohibits the taking of property without just compensation or without due process of law. Defendant
80 avers that this court can not and will not inquire into the matter as to whether said rates are just and reasonable within any other meaning; but if this court holds it has jurisdiction to make such inquiry, defendant denies that said rates are in any respect unjust and unreasonable.

Defendant further denies that the rates fixed by this defendant are, or that any of them is or will be, to complainants, for the service rendered, inadequate compensation within the aforesaid constitutional guaranty or otherwise.

Defendant avers that complainants should not be heard to maintain this suit in equity for that the said complainants have a complete and adequate remedy by proceedings before this defendant in that all the matters and things in the complainants' amended bill set forth are cognizable before this defendant; that upon application of the complainants, or of any of them, and upon proper showing, this defendant has power to suspend, modify, or amend, in whole or in part, the orders complained of, and to consider any and all of the matters in the complainants' amended bill set forth, and to take such action thereon, and to make such order thereon, as in its judgment would be proper to make; and that in advance of such application by the complainants to this defendant the complainants are not entitled as a matter of right to invoke the jurisdiction of this court in equity.

Defendant further avers that this court, sitting as a court
81 of equity, should not herein either hear or determine the rights of the complainants upon any state of facts which were within the knowledge of the complainants and which they failed and neglected to present before this defendant at the time of the hearings

out of which the orders complained of grew, nor on account of any facts, matters, or things which may have arisen since said hearings except such facts, matters, or things be first presented by application for rehearing or otherwise to this defendant. Neither does said amended bill of complaint set forth any reason why any of such matters and things could not be or were not presented to this defendant, nor that any facts, matters, or things have arisen since the said hearings, nor that the complainants or either of them have in any manner been prevented from presenting to this defendant for its consideration any of the matters or things in the complainants' amended bill set forth.

Complainants have failed to make any application to the defendant for a rehearing of said matter, on account of any such facts, to have said orders suspended, set aside, or modified, although complainants well knew at all times since June 2, 1908, the date of the report of the defendant, that the orders complained of would be issued as a matter of course unless upon application of the complainants herein (defendants before the commission) such facts should be shown to this defendant as would entitle complainants to have said orders suspended, modified, or set aside.

82 Defendant further avers that this court ought not to consider the averments in complainants' amended bill of complaint that the transportation of traffic on rates prescribed by the defendant will not afford a fair compensation or will entail a loss, or that the same are unremunerative, or that the same are unjust and unreasonable for the service performed, because such allegations and declarations are statements of conclusions and opinions of interested parties and do not have coupled therewith any statement of any of the essential elements of facts upon which or from which the reasonableness of a rate can be determined.

Defendant further says that it is vested with the exclusive right and power of determining what are just and reasonable maximum rates to be charged on traffic subject to the act to regulate commerce as amended; that the reasonableness of such rates is not open to judicial inquiry upon original evidence leading to an independent conclusion; that in determining what are just and reasonable maximum rates to be charged in the future this defendant must and does exercise discretion; that this court ought not and can not substitute its judgment and discretion for the judgment and discretion of this defendant; that this court will only determine whether the rates prescribed by this defendant are just and reasonable within the meaning of the constitutional guaranty which compels the establishment of rates with reasonable regard for the cost to the

83 carrier of the service rendered and for the value of the property employed therein and also with reasonable regard for the value of the service to the public.

This defendant further says that the complainants do not aver in their amended bill that they or either of them are in possession of any information or facts upon which to base the said conclusion that the

rates established by this defendant are unjust and unreasonable, other than the facts and evidence which were presented before the defendant in the hearing out of which the orders complained of grew, all of which facts and evidence were presented to this defendant and were by it duly considered.

Defendant shows that the ascertainment mathematically of what it costs to haul a given quantity of traffic of a certain description between two points upon a certain line of railway is impossible; that over the same line of railway, hauled by the same engine, are carried in the same train traffic in varying quantities widely different in character and value; that over the same line of railway is hauled both freight and passenger traffic in different trains of varying size; that the fixed charges of maintenance and operation can not be apportioned with mathematical exactness to the one kind of traffic or to the other; that in the same train over the same line of railway are hauled both interstate and intrastate traffic;
84 that the cost of operation and of handling these two classes of traffic can not be mathematically determined so as to apportion to each class of traffic its proper division of cost; that while a considerable proportion of cost and expense can be located to the particular service or the particular traffic in a given instance, yet that varies materially with conditions on particular lines of road with the volume, density, and direction of movement, and that no method of apportionment between different articles of freight can be devised except that which involves the exercise of discretion and judgment, results varying according to the method used.

Defendant therefore says that the statements and allegations of Paragraph XIV of the amended bill above referred to are mere allegations and opinions which involve consideration of all these complex and difficult problems and should not be accepted for the purpose of setting aside the orders of this defendant.

XV. Defendant denies that complainants have at no time prescribed rates for the transportation of lumber, shingles, and forest products between the points named in said orders in excess of charges which were just and reasonable. Defendant denies that upon the hearing before it in said cause in which said orders were so entered no evidence was considered or offered which in anywise showed or tended to show that the rates complained of
85 therein were excessive, unjust, or unreasonable; denies that the defendant entered its orders without any justification therefor, and without any evidence or finding of fact that said rates so complained of were excessive, unjust, or unreasonable. On the contrary, defendant avers that evidence was introduced before this defendant showing, and tending to show, that the rates complained of before this defendant and condemned by it in the orders in question were unjust and unreasonable, and this defendant, after a full hearing afforded to all the parties to the complaint before it, was of the opinion that said rates so complained of were unjust and unreasonable and entered its orders accordingly.

Defendant avers that in accordance with the statute in such cases made and provided it made a report in writing in respect to the matter under investigation, which report stated the conclusions of this defendant, together with its decision, order, and requirement in the premises. Said report or opinion is attached hereto as Exhibit A, and is made part hereof as fully as if the same was set forth in full in this paragraph of the answer. Defendant says that the facts shown by said investigation material to be considered by this defendant are stated fully, fairly, and completely in said report.

Defendant further says that every opportunity was afforded
86 to complainants herein in the hearing before this defendant to introduce any and all testimony and evidence which in anywise was pertinent to the matters involved in said hearing, and that at said hearings complainants herein declined to introduce further testimony and announced to this defendant that they had no further evidence to offer, and so rested their case on the evidence before this defendant.

Defendant further says that while the matters and things embraced in what is known as docket No. 1348 were pending before this defendant there were at the same time pending similar matters and things in what is known as dockets Nos. 1327, 1329, 1331, 1335, and 1054, and that by agreement of counsel in case No. 1348, to which complainants herein were parties defendant, any and all matters and things presented to this defendant in the hearings in said other cases might and should be considered by this defendant with the same force and effect as if the same had been formally presented and made part of the record in No. 1348.

XVI. Defendant denies the allegations of Paragraph XVI.

Defendant avers that the conclusions sought to be drawn from said testimony tending to show the facts stated in said paragraph were strongly and earnestly controverted by complainants in the
87 hearing before this defendant, and much testimony in opposition to the claims of the defendants in the hearing before this defendant was introduced, and that there was some conflict in the testimony and evidence before this defendant.

Defendant further avers that each and every member of the Interstate Commerce Commission fully realized the great importance of the issues involved in the complaint before this defendant; that each and every member of this defendant gave personal attention to all the testimony offered upon either side during the several days occupied in the taking of testimony, and afterwards heard all parties at great length in oral argument; and that the members of this defendant carefully examined and considered the various matters of fact and argument contained in the voluminous briefs filed by each party to the hearing before this defendant. Defendant further avers that the orders complained of in this amended bill of complaint, and the report and opinion attached hereto and made a part hereof as "Exhibit A," are the result of the most painstaking consideration and care on the part of each individual member of this defendant.

This defendant avers that by the statute it has been authorized and required to perform certain duties; that in the distribution of the powers of government this defendant is required to determine, in cases like that heard by it (out of which the orders complained
88 of in this case grew), what shall be the just and reasonable transportation charge to be charged by carriers subject to said act for the future; that authority to determine that issue could not be under the Constitution of the United States conferred upon this court, and, even if it could be so conferred, such power and authority has not been so conferred by any existing law. Defendant further avers that it is both the right and the duty of this court to protect these complainants against arbitrary and unlawful exercise of authority conferred upon this defendant. Yet this court ought not, and will not, review the judgment and findings of this defendant unless it be made clearly to appear that the orders complained of transcend the pale of legitimate regulation and constitute such a violation of the constitutional rights of the carrier as to shock the conscience of a chancellor.

Defendant further avers that the establishment of a rate of transportation for the future involves the exercise of discretion and judgment; that Congress has attempted to establish in this defendant an expert tribunal for determining questions of this character, and that this court will not undertake to say whether, upon all the facts existing in this case, it would have arrived at a different conclusion upon the facts presented as to what the rates should be for the future.

89 XVII. Defendant denies the allegations of Paragraph XVII that the rates in effect on November 1 and 2, 1907, are lower than the rates charged for like service by any carrier in the United States, and lower than rates heretofore fixed by this defendant for like services. Defendant denies that the rates fixed by the orders of this defendant are unremunerative and confiscatory in any sense. Defendant avers, on the contrary, that the rates established by the orders complained of are higher than the rates voluntarily established by the carriers for the same transportation covering a long period of years. Defendant avers that the complainants herein during the last ten years have received from their operations as common carriers munificent returns upon the property invested, and that said returns upon the property aforesaid are far above the average received by carriers in other parts of the United States.

Defendant avers that it is unable to determine from the amended bill of complaint what the complainants regard as constituting cost of conducting transportation. Defendant denies that the rates fixed by the orders of this defendant are not, and will not be, sufficient to pay the cost of conducting transportation and any just or fair return upon the value of the property used in said transportation, no matter whether complainants refer to the mere cost of hauling the
90 traffic or whether complainants refer to the proportion of fixed

charges properly attributable to said transportation and the cost of operating such transportation.

Defendant further avers that in considering what is a just and reasonable rate for the future many things are to be considered; that one of these is the question as to what extent the traffic covered by the orders of this defendant shall contribute to the total profit of the complainants herein.

Defendant admits that the enforcement of the orders complained of involves to each of the complainants an amount in excess of two thousand dollars per year.

Defendant therefore avers in conclusion that in the making of the orders complained of this defendant considered every material fact and circumstance which it should have considered, and failed to consider no material fact or circumstance which it should have considered.

XVIII. Defendant avers that the allegations of complainants' amended bill of complaint are vague and uncertain; that they do not set forth facts with sufficient certainty to show the conclusions which are therein stated, to the effect that the rates prescribed by this defendant in its orders complained of will require transportation at less than the cost of service, or at a loss to the carrier, or that
91 the same will be unremunerative, or that the same are unjust and unreasonable, or that the same are confiscatory; and that because of the failure on the part of the complainants to specify the particular items of returns from said rates, and the particular expense incident to the transportation mentioned in the defendant's order, the defendant is unable to know what complainants expect to show at final hearing, or otherwise, and on this account is not able more specifically to answer the general allegations, averments, and conclusions of the amended bill of complaint, and the defendant says that it ought not to be required to answer such allegations.

The defendant therefore denies each and all of the allegations of complainants' amended bill of complaint not otherwise specifically denied herein, and which defendant is advised is material or necessary to be answered; and says that the conclusions, inferences, and arguments are erroneous and without foundation, and that the rates which this defendant prescribed are in all things just and reasonable and will afford to each of the carriers complainant a just compensation in all instances for the service performed.

The defendant denies that the complainants are in any wise entitled to the relief, or any part thereof, prayed for in said amended bill of complaint, or any relief whatsoever, and the defendant claims the same advantage of this its answer thereto as if it had demurred to said amended bill of complaint, and prays to be dismissed
92 with its reasonable charges in this behalf most wrongfully sustained.

INTERSTATE COMMERCE COMMISSION,

By ——— ———,

Secretary thereof, thereunto duly authorized.

I hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law.

L. M. WALTER,
Solicitor for Defendant.

WASHINGTON, *District of Columbia, ss:*

Edward A. Moseley, being first duly sworn, says on oath that he is the secretary of the defendant; that he knows the contents of the foregoing demurrer and answer; that the said demurrer is not interposed for delay; and that the matters and things stated in the answer are true to the best of his knowledge and belief.

———— ————,
CHARLES C. HOUPT,
United States Attorney,
LUTHER M. WALTER,
Solicitors for Defendant.

Subscribed and sworn to before me this the —— day of December, 1908.

———— ————,
Notary Public.

93 Exhibit A.

94 POTLATCH LUMBER COMPANY ET AL.
v.
NORTHERN PACIFIC RAILWAY COMPANY ET AL. } No. 1348.

(Submitted April 14, 1908. Decided June 2, 1908.)

Complainants, owning lumber mills in the interior of Washington and Oregon, and in Idaho, allege that prior to November 1, 1907, the products of their mills found markets in the States of North and South Dakota, Minnesota, Iowa, Illinois, Nebraska, Kansas, Missouri, and Colorado, but owing to defendants' increase in lumber rates on said date between such points their markets have been greatly restricted and complainants' business materially injured; that the increased rates are unreasonable, and that lower rates should be allowed from their shipping points than those applying from the Pacific coast by even greater differentials than were in force prior to said date. The evidence shows that differentials under the coast should apply to the interior points and the defendants admit in part by their tariffs the propriety of differentials against the Pacific coast. Held, that the present relation of rates is unjust and unreasonable, and should be discontinued; and that the differentials named in the report should be substituted therefor.

H. M. Stephens for complainants.

James B. Kerr, Hale Holden, W. W. Cotton, and F. C. Dillard for defendants.

Joseph N. Teal for intervener.

Report of the commission.

COCKRELL, Commissioner:

The complainants, who are individuals, copartnerships, limited-liability stock companies, and corporations, filed their petition November 27, 1907. They manufacture, buy, sell, and ship lumber and forest products, their mills and shipping points being located in the States of Washington, Oregon, and Idaho east of the Cascade Mountains. These shipping points are within what is known as the Inland Empire, and, for purposes of transportation, are described as interior points as distinguished from Pacific coast points. The lumber of this district, prior to November 1, 1907, found markets in various States beyond the vicinity of its origin, particularly in North Dakota, South Dakota, Minnesota, Iowa, Illinois, Nebraska, Kansas, Missouri, and Colorado; the Dakotas and Nebraska being the chief consuming territory; and was transported to these markets by such of the rail carriers named as defendants as formed the through route to the point of delivery. Prior to that date a large interstate business in lumber and forest products had been built up by the com-
95 plainants, in which they used the facilities offered by the defendants, and prospered under the rates in force for such services. Effective on that date, however, the defendants, with the exceptions hereafter noted, raised the rates on the commodities shipped by the complainants from points of origin to points of destination, the tariffs making such changes being known as Trans-Continental Freight Bureau East-Bound Special Tariff No. S. R. 963, I. C. C. No. 850, with Supplements 1 and 2, and Great Northern I. C. C. No. A–2667. The complainants allege that by reason of such increase in rates they are now unable to meet competition where formerly they prospered. The complainants, in the central west, are in competition with the fir of the coast and the yellow pine of the south. All the defendants are parties to one or the other of the tariffs named except the Idaho & Washington Northern Railroad Company, which did not become a party to the Great Northern I. C. C. No. A–2667 until the issuance of Supplement No. 1 thereto prior to the filing of the complaint, and except the Chicago, Milwaukee & St. Paul Railway Company of Washington, which is not now operating, but is building, and, therefore, not a party to either of these tariffs. There is no testimony to show the existence of the latter company, and the complaint should be dismissed as to it.

The complaint alleges that the rates now in effect under the tariffs named are unjust and unreasonable; that while the rates in effect prior to Novembr 1, 1907, were reasonable and just from Pacific coast points, the complainants were and are entitled to lower rates from their shipping points, the Inland Empire, or Spokane district, than should apply to shipments from the Pacific coast, and should have a greater differential under such coast points than was in force formerly. There is also an allegation of unreasonableness in the present tariffs in that they create a difference in rates to the Minnesota Transfer and to Missouri River common points. In other

words, so far as the complainants are concerned, they allege the justice and reasonableness of the rates in effect prior to November 1, 1907, from Pacific coast points and ask for a differential of at least 10 cents per 100 pounds under such rates, to apply to shipments east bound from Spokane district.

This case is dependent upon the Pacific Coast Lumber cases, Nos. 1327, 1329, and 1335, in that the reports and orders of this commission therein must control its disposition so far as the basing rates are concerned. This relationship between the cases was recognized in the hearings, by the stipulations of counsel, by the intervener, and, most of all, by the direction of the testimony toward the subject of what differential under the coast rates should apply in favor of Spokane. The commission having decided the cases involving the coast rates, the only matter left for consideration in this
96 case is the question of what differential, if any, Spokane should have under the rates from the Pacific coast.

No reparation is asked in this case.

The Spokane group or district, as established in the tariffs complained of, embraces a large number of shipping points and was created by the rail carriers for their own convenience and for that of the shipping public. It extends westward from Spokane on the Northern Pacific by one line 232 miles to Yakima City and by another line 142 miles to Adrian. The evidence indicates, however, that no lumber is produced between Yakima City on the one hand or Adrian on the other and Spokane, the country traversed by these lines of the Northern Pacific being a farming region largely devoted to wheat raising and fruit culture. North of Spokane, on the lines of the Great Northern, the group rates extend to and beyond the British Columbian boundary at Port Hill and Rykerts and as far east as Leonia, Idaho. To the east, along the lines of the Northern Pacific and the Oregon Railroad & Navigation Company, Spokane rates apply as far as Evaro, Mont., a distance of 240 miles. Southward, along the lines of the Oregon Railroad & Navigation Company and the Northern Pacific, the group embraces Wallula, Pendleton, Dayton, Lewiston, Cul de Sac, and Stites, the extreme distances being about 200 miles.

This grouping was made primarily for transportation reasons, but the result follows certain natural lines. The territory is mainly west of the Rocky Mountains and is entirely east of the eastern slope of the Cascade Range; it extends from the international boundary on the forty-ninth degree of latitude as far south as the forty-sixth degree; and, with the exception of the included timberless farming country stretching westward from Spokane to the foothills of the Cascade Range, the district produces chiefly what is known as western pine. Throughout this territory the Spokane rate applies on forest products, with certain arbitraries added along the line of the Spokane Falls and Northern Railroad. The present Spokane district embraces the old Spokane rate group and also stations formerly

taking the rates from Sand Point, 70 miles east, and other basing points.

West of this district there is another group of rates applying to the timbered district of the eastern slope of the Cascade Range. This group takes a differential over Spokane and embraces Leavenworth on the Great Northern Railway, all stations from Cleelum to North Yakima on the Northern Pacific, and the Hood River country from Wyeth to The Dalles on the line of the Oregon Railroad & Navigation Company. As before stated, this territory now has its rates based upon the Spokane rate and carries a differential of 2½ cents additional thereto. Heppner, on a branch line of the
97 O. R. & N., though not geographically within this group, is, for reasons of transportation, properly included therein.

South of the Spokane group along the lines of the Oregon Railroad & Navigation Company and of the Oregon Short Line, extending from Meacham and Elgin on the former to Nampa and Boise City on the latter, and east of the Spokane group along the lines of the Great Northern from Marion and Whitefish to Midvale and along the lines of the Northern Pacific from De Smet, Darby, and Phillipsburg to Drummond, the respective stations are grouped under what is known as the Montana-Oregon rate.

The Spokane group as above outlined is changed from what it was under the tariffs in force prior to November 1, 1907, in that it covers a much wider territory and embraces points formerly taking a lower rate than Spokane. The differentials under the coast rates applying from this group to the various points of destination are also changed. By the former tariff Spokane territory had a differential to Omaha of 5 cents as against the coast, but there was no differential in its favor to St. Paul, Chicago, Kansas City, St. Louis, or Denver. Now the differential to each of these basing points is 5 cents.

The following tables, filed in behalf of the defendants, will illustrate some of the changes in differentials under the old and new tariffs:

Statement showing differentials, old and new, on fir lumber from coast district and pine lumber from Spokane district to points in Minnesota and northern Dakota on Northern Pacific Railway.

	From Spokane under coast rates.		From Montana under Spokane rates.	
	Old.	New.	Old.	New.
All stations in Minnesota	None	5	None	None in some cases; 2c. in others.
All stations in North Dakota between Haggert and Oriska, inclusive; all points on Casselton Branch, Casselton to Marion; all points on Fargo and Southwestern Branch, Cotters to Streeter; all points on the Cooperstown Branch, Sanborn to McHenry; all points on Oakes Branch, Stevenson to Oakes.	None	5	None	None in some cases; 2c. in others.

Statement showing differentials, old and new, on fir lumber from coast district and pine lumber from Spokane district, etc.—Continued.

	From Spokane under coast rates.		From Montana under Spokane rates.	
	Old.	New.	Old.	New.
All points on Jamestown and Northern Branch, Jamestown to Leeds, inclusive.	None in some cases; 5c. in some; 4c. in others.	6½ & 7½	None in some cases; 5c. in cases 5c. in some; 4c. in others.	None in some cases; 3c. and 4c.
Valley City	None in some cases; 2c. in some and 4c. others.	5	None in some cases; 2c. in some; 1½c. in others.	None in some cases; 2c. in others.
Points between Eldridge and Steele, inclusive.	None in some cases; 5c. in some; 4c. in others.	6½ & 7½	None in some; 5c. in some; 4c. in others.	None in some and 2c. in others.
Points between Geneva and Apple Creek, inclusive.	None in some; 5½ in some; 4½ in others.	6½, 7, 7½	None in some; 5½c. in some; 4½c. in some.	1, 2, 3, and 4c.
Linton	None in some cases; 5½c. in some, and 4½ in others.	5	None in some; 5½c. in some; 4½c. in others.	2c.
Bismarck	None in some; 5½c. in some; 4½ in others.	6½ & 7½	None in some; 5½c. in some; 4½c. in others.	1, 4, and 5c.
From Mandan to Sully Springs, inclusive.	None in some; 6, 5½, and 4½ in others.	7½ & 8½	None in some; 6, 5½, 5, and 4½c. in others.	1, 3, and 4c.

98 *Statement showing differentials, old and new, on fir lumber from coast district, pine lumber from Spokane district (Spokane to Idaho-Montana line), to points every 50 miles on Great Northern Railway, Montana-North Dakota line, to Minneapolis, also branch lines in North and South Dakota.*

SPOKANE DISTRICT.

	Under coast rates.	
	Old.	New.
Buford, N. Dak	None to 7 cents	5 cents to 8 cents.
Ray, N. Dak	None to 6½ cents	7½ cents to 8½ cents.
Palermo, N. Dak	None to 6 cents	Do.
Surrey, N. Dak	None to 5½ cents	Do.
Tunbridge, N. Dak	do	7 cents to 8 cents.
Penn, N. Dak	None to 4½ cents	6½ cents to 7½ cents.
Petersburg, N. Dak	None to 1 cent	6 cents to 7 cents.
Portland Junction, N. Dak	None	5 cents.
Everest, N. Dak	do	Do.
Wahpeton, N. Dak	do	Do.
Donnelly, Minn	do	Do.
Murdock, Minn	do	Do.
Darwin, Minn	do	Do.
Minneapolis, Minn	do	Do.

BRANCHES IN NORTH DAKOTA.

Sherwood, N. Dak	None to 3½ cents	7½ cents to 8½ cents.
Maxbass, N. Dak	None to 4½ cents	Do.
Antler, N. Dak	None to 4 cents	7 cents to 8 cents.
Dunseith, N. Dak	None to 3½ cents	Do.
St. John, N. Dak	None to 4½ cents	6 cents to 7 cents.
Sarles, N. Dak	None	5½ cents to 6½ cents.
Hannah, N. Dak	do	5 cents to 5½ cents.
Walhalla, N. Dak	do	5 cents.
Neche, N. Dak	do	Do.
Forbes, N. Dak	do	Do.

BRANCHES IN SOUTH DAKOTA.

Aberdeen, S. Dak	None	5 cents.
Huron, S. Dak	do	Do.
Yankton, S. Dak	5 cents	Do.

These tables are to be read with this explanation: They apply to the present Spokane grouping of shipping points, which embraces the former Spokane district and also others, including the group formerly known as the Sand Point district. In both tables in the columns showing the differentials applying by the old tariffs to the Spokane district under the coast rates the word "None" from Sully Springs, N. Dak., on the west, to all stations in Minnesota, on the east, on the lines of the Northern Pacific Railway, and the same word from Buford, N. Dak., to Minneapolis, Minn., on the line of the Great Northern Railway, applies strictly to the differential allowed the old Spokane group under the tariffs in force prior
99 to November 1, 1907. There was no differential in favor of Spokane from the western boundary of North Dakota to and including Minnesota Transfer. The differentials shown in these tables as applying by the old tariffs to the present Spokane district actually applied to Sand Point and other stations which are now included with Spokane in the new grouping.

From the above it will be seen that the defendant carriers have by their own voluntary actions admitted the propriety, not only of a group or blanket, for the purpose of rate making from the Spokane-Sand Point district, but also that some differential under the coast should be allowed to that group. The complainants, however, contend that a much greater differential should be allowed to Spokane than has ever obtained. Their petition asks for a differential of 10 cents under the coast, and the testimony and briefs in their behalf are directed to even a higher differential than that. Their claims in this regard are based upon (a) the distance, (b) the mountain grades to the summit of the Cascades, and (c) the wide treeless farming section, all to be traversed from the coast before the timber of the Spokane district is reached. To these reasonable transportation bases for a differential are added matters of persuasion and inducement that essentially pertain to economics and to the position of the complainants with respect to the quality of their product and the possibilities of commercial competition. They allege and prove that their lumber is inferior to that produced on the coast; that the standing timber is smaller, more knotty, and requires greater care and cost to mill and market than does the fir of the coast or the yellow pine of the South; and that as their finished product is 93 per cent common lumber, only 7 per cent being upper or better than common, they can never meet sharp competition anywhere outside of the treeless States of the Central West, where no common lumber is produced locally.

In the view we take of this case it is not necessary to consider at length when and under what circumstances these matters might or might not be of weight in determining the reasonableness of a rate or the desirability of a differential. As we have heretofore held, there are many matters that may properly be considered by a carrier in fixing a rate which will give competition in certain territories and for certain commodities when acting of its own motion, which, never-

theless, would not be sufficient to justify this commission in fixing such rate for the carrier.

Two facts stand out as beacon lights in the sea of testimony produced in this case: One is that the lumbermen of the Spokane district prospered under the old rates, though their product was inferior; the other is that the carriers by the tariffs complained of, as well as in part by the old tariffs, have admitted in part the propriety of a differential in favor of the Spokane district, as grouped in the new tariffs and in part in the old, as against the coast.

100 A careful examination of the testimony as a whole makes it plain that a differential in favor of Spokane and the Spokane district under the rates from the coast should exist, but there is great difficulty in determining just what the amount of that differential should be, and from what shipping and to what destination points it should apply. The same is true of the district bordering the eastern slope of the Cascade Range. If, however, the tables hereinbefore set out are referred to, it will be apparent that even under the old tariffs differentials under the coast were allowed from some shipping points in the present Spokane-Sand Point district to certain destination points, the grading being from nothing in Minnesota to 6 cents on the line of the Northern Pacific between Mandan and Sully Springs, inclusive, in North Dakota; and along the line of the Great Northern from nothing in Minnesota to from 1 cent at Petersburg to 7 cents at Buford, N. Dak. To the old Spokane district proper no differential under the coast was allowed. Under the new tariffs, along the lines of the Great Northern and Northern Pacific the differentials from the present Spokane-Sand Point district under coast rates are 5 cents in Minnesota, and from 5 cents to 8½ cents in North Dakota. By these same new tariffs the rates from the Montana-Oregon group to various common destination points are from nothing to 5 cents under the Spokane rates, the basing of the Montana-Oregon group being, however, directly under the coast rates, and not under the Spokane rates. The rates from the eastern slope of the Cascade Range are 2½ cents higher than the Spokane rates in all cases, this differential being apparently an intermediate or half step between the coast and the Spokane rates. These facts, though not conclusive of the grouping that should be made under a practical restoration of the tariffs in effect prior to November 1, 1907, are strongly persuasive that some changes in the former groupings should be made.

From the summit of the Cascade Range westward to the coast the timber is fir of magnificent proportions; on the eastern slope of these mountains the timber is sparser, smaller, and is a mixture of fir and western pine; in the Spokane district the timber is distinctly of lower grade and consists of about 50 per cent western pine, 10 per cent white pine, and 40 per cent of other woods valued even less highly than western pine; the districts taking the Montana-Oregon basis have a timber somewhat like the Spokane district. These facts are relied upon by the complainants as inducements to the estab-

lishment of a very high differential in favor of Spokane, and on behalf of the interveners and of the defendants much is made of the inducement contra to the effect that, due to the fact that coast lumber is generally shipped green and western pine (Spokane) lumber is always shipped dry, there is a natural differential in the weights of lumber from the coast and from Spokane equal to 500
101 pounds per 1,000 feet in favor of Spokane, and that therefore there should be no money differential in the rates. If, however, these matters should be taken into consideration, the added cost to the Spokane district of drying its lumber should also be remembered, as well as the fact that at points at present somewhat inaccessible there are as yet untouched noticeable bodies of white pine in the Spokane district. Notwithstanding all this, the natural advantages or disadvantages of the various timber sections represented in this case, and the problems facing them in competition with each other, were assumed by the respective manufacturers when they engaged in the business, prior to the time the present tariffs became effective; they are not necessarily determinative of the question of what differentials should apply to the Spokane district or to the district on the eastern slope of the Cascade Range. For the purposes of this case it is sufficient that the defendant carriers by their own acts in establishing the various tariffs, old and new, have made admissions, in the nature of estoppels in pais, that parts of the Spokane district, as grouped since November 1, 1907, should have a differential under the rates from the coast, and that an intermediate differential should apply to the eastern slope of the Cascade Range—the two districts being separated by a natural barrier of farming country.

The reports and orders in cases No. 1327, Oregon & Washington Lumber Manufacturers' Asso. et al. v. Union Pacific R. R. Co. et al.; No. 1329, Pacific Coast Lumber Manufacturers' Asso. v. Northern Pacific Ry. Co. et. al.; No. 1335, Southwest Washington Lumber Manufacturers' Asso. v. Northern Pacific Ry. Co. et al., decided concurrently herewith, necessarily control the disposition of this case. In view of the physical facts, emphasized in the record of this case, that Spokane is separated from the Pacific coast by a rail distance little short of 400 miles by the routes actually used; that in most of these routes the haul from the coast necessarily crosses the Cascade Range; that for something like 200 miles east of the Cascades the country is a treeless farming region until the immediate vicinity of Spokane is reached, the commission's conclusions are that the rates on interstate shipments of lumber, shingles, and other forest products from the groups hereafter named to points on and west of a line drawn from Pembina, N. Dak., southward through Grand Forks, N. Dak., Moorhead and Breckenridge, Minn., Sioux City and Council Bluffs, Iowa, St. Joseph and Kansas City, Mo., and thence to Port Arthur, Texas, along the Kansas City Southern Railway, including all points that now take the same rates as any of the points located on said line between and including Sioux City, Iowa, and

102 Kansas City, Mo., should be less than the rates on similar shipments from the "Coast rates" group as follows:

Rates from the group points east of the summit of the Cascade Mountains, and west of the present "Spokane rates" group, to points on and west of said line from Pembina, N. Dak., to Port Arthur, Tex., including all points that now take the same rates as any of the points located on said line between and including Sioux City, Iowa, and Kansas City, Mo., should be less than the rates prescribed by the commission in cases Nos. 1327, 1329, and 1335 from the "Coast rates" group by differentials beginning at not less than 2 cents per 100 pounds and graded up westwardly therefrom (a) to a differential of not less than 6 cents per 100 pounds at Buford, N. Dak., on the line of the Great Northern Railway; (b) to a differential of not less than 6 cents per 100 pounds at Medora, N. Dak., on the line of the Northern Pacific Railway; (c) to a differential of not less than 6 cents per 100 pounds at Edgemont, S. Dak., on the line of the Chicago, Burlington & Quincy Railroad; (d) to a differential of not less than 6 cents per 100 pounds at Cheyenne, Wyo., on the line of the Union Pacific Railroad; (e) and to a differential of not less than 6 cents per 100 pounds at Denver, Colo., on the line of the Union Pacific Railroad.

Rates from the present "Spokane rates" group and from the present "Montana-Oregon" rates group to points on and west of said line, including all points that now take the same rates as any of the points located on said line between and including Sioux City, Iowa, and Kansas City, Mo., should be less than the "Coast rates" as prescribed in the cases specified, by differentials beginning at not less than 3 cents per 100 pounds and graded up westwardly therefrom to a differential of not less than 7 cents per 100 pounds at Buford, N. Dak.; Medora, N. Dak.; Edgemont, S. Dak.; Cheyenne, Wyo.; and Denver, Colo., as described in the preceding paragraph.

Rates from the group of points east of the summit of the Cascade Mountains, and west of the present "Spokane rates" groups, to points east of said line, Pembina-Port Arthur, and excluding all points that now take the same rates as any of the points located on said line between and including Sioux City, Iowa, and Kansas City, Mo., should be less than the "Coast rates," as prescribed in the cases specified, by a differential of not less than 2 cents per 100 pounds, up to and including Duluth, Minneapolis, St. Paul and Minnesota Transfer, and from the Missouri River crossings to the Mississippi River crossings.

Rates from the said "Spokane rates" group and the "Montana-Oregon" rates group, as they now exist, to points east of said
103 line and excluding all points that now take the same rates as any of the points located on said line between and including Sioux City, Iowa, and Kansas City, Mo., should be less than the "Coast rates," as prescribed in the cases specified, by a differential of not less than 3 cents per 100 pounds, up to and including Duluth,

Minneapolis, St. Paul and Minnesota Transfer, and from the Missouri River crossings to the Mississippi River crossings.

These differentials should not be construed or understood to conflict with the rates prescribed in case No. 1054, Pacific Coast Lumber Manufacturers' Asso. et al. v. Northern Pacific Ry. Co. et al.

The groups referred to in these conclusions and in the accompanying order as the "Spokane rates" group and the "Montana-Oregon" rates group are the groups, or rating territories, created by the carriers in T. C. F. B., I. C. C. No. 850, and Great Northern I. C. C. No. A–2667, both effective November 1, 1907; the groupings named are not those in effect prior to that date. The group of points referred to in these conclusions as east of the summit of the Cascade Mountains and west of the present "Spokane rates" group is intended to embrace the points grouped in the tariffs named and including the Hood River, Ellensburg, and Leavenworth districts.

An order will be made in accordance with these conclusions, and this report should be read in connection with with the commission's reports and others in the cases hereinbefore specified.

Knapp, chairman, and Harlan, commissioner, dissent on the general grounds stated in their dissenting opinion in Oregon & Washington Lumber Manufacturers' Asso. et al. v. Union Pacific R. R. Co. et al., No. 1327, supra.

(Endorsed:) Filed Decembr 16th, 1908. Henry D. Lang, clerk.

104 Thereafter and on Jany. 4th, 1909, the following præcipe for order setting demurrer down for hearing was filed in said cause, and the following order entered thereon, viz:

105 Circuit Court of the United States, District of Minnesota, Third Division.

GREAT NORTHERN RAILWAY CO. ET AL.
vs.
INTERSTATE COMMERCE COMMISSION.

Præcipe for order setting down demurrer for hearing.

To the clerk of the above named court:

Please enter order setting down demurrer of defendant for hearing at next rule day.

JAMES B. KERR,
HALE HOLDEN,
F. C. DILLARD,
W. W. COTTON,
Solicitors for Complainants.

(Endorsed:) Præcipe for order setting demurrer down for February rules. Order entered T. M. vol. 39, page 91. Filed January 4th, 1909. Henry D. Lang, clerk.

106 United States Circuit Court for the District of Minnesota, Third Division.

Term minutes, June term, A. D. 1908. January 4th, 1908: Monday morning. Court opened pursuant to adjournment. Present: Hon. Milton D. Purdy, judge; Henry D. Lang, clerk.

* * * * * * *

GREAT NORTHERN RAILWAY COMPANY ET AL. *vs.* INTERSTATE COMMERCE COMMISSION. } Equity No. 885.

Pursuant to a præcipe this day filed herein signed by the solicitors for the complainants, it is by the court ordered that the demurrer of defendant be and the same hereby is set down for hearing at the next rule day, to-wit: February 1st, A. D. 1909 at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard.

* * * * * * *

A true record.
Attest:

HENRY D. LANG, *Clerk.*

Thereafter and on the same day the following replication was filed in said cause, to-wit:

107 In the Circuit Court of the United States for the District of Minnesota, Third Division.

GREAT NORTHERN RAILWAY CO. ET AL. *vs.* THE INTERSTATE COMMERCE COMMISSION, defendant. } In Equity No. —.

Replication.

These repliants saving and reserving to themselves all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the defendant for replication thereunto saith that they do and will aver, maintain, and prove their said amended bill to be true, certain, and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive, and insufficient in the law to be replied unto by these repliants, without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed, or denied, is true; all which matters and things these repliants are ready to aver, maintain, and prove as this honorable court

shall direct, and humbly prays as in and by their said bill they hath already prayed.

JAMES B. KERR,
HALE HOLDEN,
W. W. COTTON,
F. C. DILLARD,
Solicitors for Complainants.

(Endorsed:) Replication. Filed January 4th, 1909. Henry D. Lang, clerk.

108 Thereafter and on January 5th, 1910, the following stipulation as to record for submission to master, etc., was filed in said cause, to wit:

109 DECEMBER 4, 1909.

Union Pacific R. R. Co. et al. *v.* Interstate Commerce Commission.
In Equity. No. 883.

Northern Pacific Ry. Co. et al. *v.* Interstate Commerce Commission.
In Equity. No. 884.

Great Northern Ry. Co. et al. *v.* Interstate Commerce Commission.
In Equity. No. 885.

Stipulation.

In addition to the stipulation entered into at St. Paul concerning the printing of the record in the cases before the Interstate Commerce Commission, the following supplementary agreement, subject to the objections heretofore made as to the admissibility of testimony, is hereby entered into between counsel for the respective parties, as follows, to wit:

1. The printed abstract of the oral testimony fairly presents the substance of all that character of testimony offered before the Interstate Commerce Commission on the hearing before it of these cases, and the printed abstract fairly presents the selected exhibits or the substance thereof presented to said commission on said hearing.

2. The other exhibits presented on the hearing aforesaid or reports and documents on file with the commission or referred to on the hearing before said commission in said cases may be considered by the master and used by either party hereto on the hearing before him without the printing thereof.

3. Either of the parties hereto may print and file with the master or the court such portions thereof as counsel may deem material, but if the same be not printed for the hearing before the master no rights

to use the same as evidence or rights to print the same for the use of the court thereafter are waived.

F. C. DILLARD,
CHAS. DONNELLY,
HALE HOLDEN,
Solicitors for Complainants.
LUTHER M. WALTER,
JOSEPH N. TEAL,
WILLIAM A. WIMBISH,
Solicitors for Defendant.

(Endorsed:) Stipulation as to record for submission to master, &c. Filed Jan. 5, 1910. Henry D. Lang, Clerk.

110 Thereafter and on January 11th, 1909, the following instructions of court in relation to hearing upon demurrer was filed in said cause, to wit:

111 ST. LOUIS, MISSOURI, *January 9, 1909.*

Hon. HENRY D. LANG,
Clerk, U. S. Circuit Court, St. Paul, Minnesota.

DEAR SIR: Regarding the three cases, Nos. 883, 884, and 885, the railroad cases against the Interstate Commerce Commission pending in St. Paul in which demurrers have been interposed, you may notify the lawyers that the circuit judges will be in St. Louis until the first of April; that during April they will be separated, and that they will be in St. Paul during the session of the Court of Appeals in May. The cases may be heard at St. Paul at some convenient time after May 1st, or they may be heard at St. Louis at some convenient time prior to April 1st, if they desire to urge their hearing at so early a date. Personally I should prefer to have them heard at St. Paul, but the judges will accommodate the lawyers as to the time of hearing. Before fixing upon the time, however, we should like notice of the time desired, because some of the judges are liable to be out of the city here unless we agree upon the time.

Yours, truly,

WALTER H. SANBORN,
U. S. Circuit Judge.

(Endorsed:) Instructions of court in relation to hearing upon demurrer. January 11th, 1909. Henry D. Lang, Clerk. By Louise B. Trott, Deputy.

112 Thereafter and on February 15th, 1909, the following order appointing F. N. Dickson special master was filed and entered in said cause, to-wit:

113 In the Circuit of the United States for the district of Minnesota.

GREAT NORTHERN RAILWAY COMPANY ET AL.
vs.
INTERSTATE COMMERCE COMMISSION.

Come now the parties, the complainants by F. C. Dillard, Esq., and the defendant by Luther M. Walter, Esq., and after due consideration,

It is hereby ordered that Frederick N. Dickson, Esq., of St. Paul, Minnesota, be, and he is hereby appointed special master in chancery in this case.

The special master hereby appointed is empowered and directed to take and report to the court the evidence in this cause; to examine the same; to make the necessary computations; to find and state the facts in this case and to report advisory conclusions of law and recommend a proper form of decree herein.

It is further ordered that upon the completion of his report, the special master shall notify counsel for the respective parties thereof and shall exhibit said report to them or deliver to them copies thereof, that each of the parties to this suit may thereupon file exceptions to the report with the master within thirty days after its exhibition or delivery to their counsel and the master shall thereupon consider and sustain or overrule each of said exceptions and shall thereafter return to the court his report, the said exceptions, his rulings thereon, the evidence and any modifications of or additions to his report he may deem it just and proper to make in view of the exceptions.

Upon the filing of such report and exceptions, this cause shall stand for hearing before the court upon said exceptions as
114 though they had been made at the time specified in Rule 83 in Equity, but further exceptions may be filed by any party to the suit within one month from the time of the return of said report to the court.

It is further ordered that the time in which the complainants shall take their evidence is fixed and limited to sixty days from the date hereof; that the time within which the defendant shall take their evidence in defense is fixed and limited to forty-five days thereafter and the time within which the complainants shall take their evidence in rebuttal is fixed and limited to thirty days thereafter.

February 13, A. D. 1909.

WALTER H. SANBORN,
WILLIS VAN DEVANTER,
WILLIAM C. HOOK,
ELMER B. ADAMS,
Circuit Judges.

(Endorsed:) Order appointing F. N. Dickson special master. Entered Term Minutes Volume 29 page 159. Filed February 15th, 1909. Henry D. Lang, Clerk. By, Louise B. Trott, Deputy.

Thereafter and on February 16th the following oath of Frederick N. Dickson was filed and entered in said cause, to-wit:

115 United States Circuit Court. District of Minnesota. Third Division.

GREAT NORTHERN RAILWAY COMPANY ET AL.
vs.
INTERSTATE COMMERCE COMMISSION.

I, Frederick N. Dickson, do solemnly swear that I will support the Constitution of the United States, and faithfully, impartially, and to

the best of my ability perform my duties as special master in chancery in the above entitled cause, so help me God.

FREDERICK N. DICKSON.

Subscribed and sworn to before me this 16th day of February, A. D. 1909.

[SEAL OF COURT.]

LOUISE B. TROTT,
Deputy Clerk, U. S. Circuit Court
for the District of Minnesota.

(Endorsed:) Oath of Frederick N. Dickson, special master. Entered Miscellaneous Records, vol. 1, page 180. Filed February 16th, 1909. Henry D. Lang, Clerk. By Louise B. Trott, Deputy.

Thereafter and on February 16th, 1909, the following stipulation postponing demurrer was filed in said cause, to-wit:

116 In the Circuit Court for the United States for the District of Minnesota.

GREAT NORTHERN RAILWAY COMPANY ET AL.,
complainants,
vs.
INTERSTATE COMMERCE COMMISSION.

In this cause it is stipulated and agreed that the demurrers may be postponed and heard at the final hearing of the case on the merits, subject to the right of the court, or judges thereof, to set them down for hearing at an earlier day.

HALE HOLDEN,
F. C. DILLARD,
Solicitors for Complainants.
LUTHER M. WALTER,
Solicitor for Defendant.

FEBRUARY 3RD, 1909.

(Endorsed:) Stipulation postponing demurrer. Filed February 16th, 1909. Henry D. Lang, Clerk. By Louise B. Trott, Deputy.

Thereafter and on the same day the following order postponing the hearing on demurrer was entered in said cause, to-wit:

117 United States Circuit Court. District of Minnesota. Third Division.

GREAT NORTHERN RAILWAY COMPANY ET AL.,
complainants,
vs.
INTERSTATE COMMERCE COMMISSION,
defendant.

In accordance with a stipulation to that effect signed by the solicitors for the respective parties and filed herein, it is by the court

ordered that the demurrer may be postponed and heard at the final hearing of the case on the merits, subject to the right of the court, or judges thereof, to set them down for hearing at an earlier date.

WALTER H. SANBORN,
WILLIS VAN DEVANTER,
WILLIAM C. HOOK,
ELMER B. ADAMS,
Circuit Judges.

(Endorsed:) Order postponing hearing on demurrer. Entered T. M., vol. 39, page 164. Filed February 16th, 1909. Henry D. Lang, Clerk. By Louise B. Trott, Deputy.

Thereafter and on March 15th, 1909, the following order appointing Robert S. Taylor stenographer was filed and entered in said cause, to-wit:

118 In the Circuit Court of the United States for the District of Minnesota.

GREAT NORTHERN RAILWAY COMPANY ET AL., COMPLAINANTS,
vs.
INTERSTATE COMMERCE COMMISSION.

It is hereby ordered, that Robert S. Taylor be, and he is hereby, appointed stenographer, empowered and directed to take and report, under the direction and orders of Honorable Frederick N. Dickson, the special master herein, the evidence that may be offered in the case above entitled.

WALTER H. SANBORN,
Circuit Judge.

ST. LOUIS, MO., *March 15, 1909.*

(Endorsed:) Order appointing Robert S. Taylor, stenographer. Entered T. M. Vol. 39, page 202. Filed March 15th, 1909. Henry D. Lang, clerk. By Louise B. Trott, deputy.

Thereafter and on April 15th, 1909, the following stipulation extending complainants' time to take testimony to May 15th, 1909, was filed in said cause, to-wit:

119 Circuit Court of the United States for the District of Minnesota. Third Division.

GREAT NORTHERN RALWAY COMPANY ET AL., complainants,
vs.
THE INTERSTATE COMMERCE COMMISSION, defendant.
In Equity, No. 885.

Stipulation.

It is hereby stipulated and agreed by counsel for the respective parties that the time for taking complainants' evidence may be ex-

tended until May 15, 1909, and that on or before that day or immediately thereafter the time may by order of court be fixed for the taking of evidence in behalf of the defendant, as well as time thereafter if desired, for taking evidence by complainants in rebuttal.

Dated this 15th day of April, 1909.

F. C. DILLARD,
CHAS. DONNELLY,
HALE HOLDEN,
Solicitors for Complainants.
LUTHER M. WALTER,
Solicitor for Defendant.

(Endorsed:) Stipulation extending complainants time to take testimony to May 15, 1909. Filed April 15, 1909. Henry D. Lang, clerk.

Thereafter and on the same day the following order extending time to take complainants' testimony was filed and entered in said cause, to wit:

120 Circuit Court of the United States for the District of Minnesota. Third Division.

GREAT NORTHERN RAILWAY COMPANY ET AL., complainants, *vs.* THE INTERSTATE COMMERCE COMMISSION, defendant.	In Equity No. 885.

Order.

Upon reading the stipulation filed in this cause this day, duly signed by counsel for the parties hereto, it is ordered:

That the time heretofore granted to complainants for taking testimony in this cause be extended until May 15, 1909; that defendant may on or before said date or immediately thereafter apply to the court by stipulation or otherwise, for the fixing of a date for the taking of its testimony herein, at which time an order will be entered for that purpose, and also setting a time for taking by complainants of testimony in rebuttal after the completion of defendant's testimony so to be provided for.

In other respects the order heretofore made touching the taking of testimony and the report of the master appointed herein shall remain as provided for in the original order.

Dated April 15, 1909.

WALTER H. SANBORN,
WILLIS VAN DEVANTER,
ELMER B. ADAMS,
Circuit Judges.

(Endorsed:) Order extending time to take complainants' testimony. Entered T. M. vol. 39, page 259. Filed April 23rd, 1909. Henry D. Lang, clerk.

121 Thereafter and on March 11th, 1910, the following stipulation to tax costs of H. Lee, crier, Chicago, was filed in said cause, to wit:

122 In the Circuit Court of the United States for the District of Minnesota. Third Division.

GREAT NORTHERN RAILWAY COMPANY ET AL.
vs.
INTERSTATE COMMERCE COMMISSION.
} In Equity No. 885.

Stipulation to tax costs.

It is agreed that the clerk shall tax in this cause the sum of $2.50 per day for eight days, in favor of H. Lee, court crier, as compensation to him for attendance at the argument of this cause before special master, in the city of Chicago, February 8th to 16th, inclusive. These costs to be adjudged against the losing party in this cause in the final event of the action.

F. C. DILLARD,
CHAS. DONNELLY,
HALE HOLDEN,
Attorneys for Complainants.
LUTHER M. WALTER,
J. N. TEAL,
W. A. WIMBISH,
Attorneys for Defendant.

Dated at Chicago, Illinois. March 8th, 1910.

(Endorsed:) Stipulation to tax costs of H. Lee, court crier. Filed Mar. 11, 1910. Henry D. Lang, clerk. By Louise B. Trott, deputy.

Thereafter and on July 30th, 1910, the following stipulation to modify order and order were filed and entered in said cause, to wit:

123 In the Circuit Court of the United States. District of Minnesota. Third Division.

GREAT NORTHERN RAILWAY COMPANY ET AL., complainants.
vs.
INTERSTATE COMMERCE COMMISSION, DEFENDANT.
} In Equity. No. 885.

Stipulation.

It is hereby stipulated and agreed that the order entered herein on February 15, 1909, shall be modified and that either party hereto shall file its exceptions to the master's report on or before August 19, 1910, and that an order may be entered herein setting down said exceptions for hearing before the master, in the city of St. Paul, in August 19, 1910; that said order may provide that the master

shall pass upon said exceptions and file his report, said exceptions, a report of his action thereon, and all other matters contemplated by the order of February 15, 1909, in the clerk's office, on or before August 27, 1910; that said order shall provide that either party hereto shall file such additional exceptions as may be desired in the clerk's office on or before September 10, 1910, and that this cause be set down for hearing before the circuit judges at the city of St. Paul on September 15, 1910.

HALE HOLDEN,
Solicitor for Complainants.
LUTHER M. WALTER,
Solicitor for Defendant.

Dated this 27th day of July, 1910.

(Endorsed:) Stipulation to modify order. Filed July 30th, 1910. Henry D. Lang, clerk. By Louise B. Trott, deputy.

124 In the Circuit Court of the United States. For the District of Minnesota. Third Division.

GREAT NORTHERN RAILWAY COMPANY ET AL., complainants. *vs.* INTERSTATE COMMERCE COMMISSION, DEFENDANT.	In Equity. No. 885.

Order.

Upon reading the stipulation dated July 27, 1910, of the parties hereto, duly filed herein, and upon due consideration thereof.

It is ordered that the order heretofore entered on February 15, 1909, appointing Honorable Frederick N. Dickson, as special master, and defining his duties touching the making of a report, hearing exceptions thereon and filling his said report, exceptions, and rulings thereon in the office of the clerk in this court, be, and the same is hereby, modified; and it appearing that the special master did on July 22, 1910, deliver a copy of his report to each of the parties hereto, in lieu of the provisions of said order.

It is ordered that either party hereto shall file its exceptions, if any, to the master's report with him on or before August 19, 1910, and that on that day, at the city of St. Paul, the special master shall hear arguments upon any exceptions so filed and presented to him to his report; that on August 27, 1910, the special master shall file with the clerk of this court his report, any exceptions thereto filed with him as aforesaid, a statement of his action and rulings thereon, together with a form of decree recommended by him to be entered in this cause.

It is further , in accordance with the stipulation as aforesaid, that either party hereto shall file with the clerk in this court

125 on or before September 10, 1910, such further exceptions as may be taken, and that this cause be, and the same is hereby, set down for hearing before the circuit judges of this circuit, in the United States court room, at the city of St. Paul, Minnesota, on September 15, 1910, upon the master's report and the exceptions thereto, including those exceptions filed with him as aforesaid, and such additional exceptions as may be filed in the clerk's office, as provided for in this order.

WILLIS VAN DEVANTER,
United States Circuit Judge.

Dated this 30th day of July, 1910.

(Endorsed:) Order. Entered T. M. vo. 42, page 118 and 119. Filed, July 30th, 1910. Henry D. Lang, clerk. By Louise B. Trott, deputy.

Thereafter and on August 27th, 1910, the master's report was filed in said cause, to wit:

126 In the Circuit court of the United States for the District of Minnesota. Third Division.

No. 883.

UNION PACIFIC RAILROAD COMPANY, OREGON SHORT LINE RAILROAD Company, Oregon Railroad & Navigation Company, Southern Pacific Railway Company, Northern Pacific Railway Company, Great Northern Railway Company, Chicago, Burlington & Quincy Railroad Company, and Oregon California Railroad Company, complainants,

vs.

INTERSTATE COMMERCE COMMISSION, DEFENDANT.

No. 884.

NORTHERN PACIFIC RAILROAD COMPANY, GREAT NORTHERN RAILWAY Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad & Navigation Company, complainants,

vs.

INTERSTATE COMMERCE COMMISSION, DEFENDANT.

No. 885.

GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC RAILWAY COMPANY, CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, UNION PACIFIC RAILROAD COMPANY, OREGON SHORT LINE RAILROAD COMPANY, OREGON RAILROAD & NAVIGATION COMPANY, AND SOUTHERN PACIFIC COMPANY, complainants,

vs.

INTERSTATE COMMERCE COMMISSION, DEFENDANT.

Master's report.

These three suits were begun by the carriers parties complainant hereto to enjoin the enforcement of certain orders of
127 the Interstate Commerce Commission prescribing maximum rates for the future transportation of lumber in carload lots from points on the Pacific coast to points in various States and Territories east and southeast of the points of origin. In the case of No. 883, called the Union Pacific case, an inju'ction is sought against an order made by the commission in its docket No. 1327, upon a complaint brought by the Oregon and Washington Lumber Manufacturers Association and others against the Union Pacific Railroad Company and others. The complaint alleged that an advance in the rates on lumber and other forest products established by the defendants and other participating carriers from points in Oregon, Washington, Idaho, Montana, and British Columbia to points in other States therein set forth were unreasonable. The rates prescribed by the commission were the same as those in effect immediately prior to November 1, 1907, except that the rates to all points on and east of a line drawn from Pembina, North Dakota, south to Port Arthur, Texas, subject to minor exceptions, might be increased not to exceed 5 cents per one hundred pounds.

In the case of No. 884, called the Northern Pacific case, the bill attacks an order of the commission made in its docket No. 1329 and No. 1335, upon complaints filed by the Pacific Coast Lumber Manufacturers Association and the Southwest Washington Lumber Manufacturers Association, respectively. Those complaints attack the reasonableness of defendant's rates substantially as complained of in the Union Pacific case, docket No. 1327.

In the case of No. 885, called the Great Northern case, the bill attacks an order prescribing rates for the future on lumber and forest products made in its docket No. 1348, upon complaint of the Potlatch Lumber Company and others. The rates attacked
128 had been advanced on November 1, 1907, and applied from points of origin in the States of Washington, Oregon, and

Idaho, east of the Cascade Mountains commonly known as interior points. The points of destination were in States south and east of the States in which were the points of origin. In this case the commission established rates to the various points of destination referred to in numbers 1327, 1329, and 1335, lower than the coast rates group by differentials beginning at not less than 2 cents per one hundred pounds and graded up to not less than 6 cents per one hundred pounds from the group west of Spokane. From the Spokane group the differentials graded from 3 cents to 7 cents per one hundred pounds.

All these orders were effective August 15, 1908, but were later extended by order of the commission so as to become effective October 15, 1908. The rates so prescribed by the commission are now and have been continuously in effect since said latter date and they expire by limitation of the statute on October 15, 1910.

These three cases were all referred to the master to hear and report findings of facts and recommendations for a decree and were tried together.

It is conceded that all technical requirements of the statute necessary to properly bring the matter before the Interstate Commerce Commission and to confer on the commission authority to determine and prescribe rates have been complied with. The bills allege in substance that in making the various orders the commission acted without warrant of law in that the act to regulate commerce as amended by the so-called Hepburn bill of June 29, 1906, is unconstitutional and void because it confers upon the commission executive, legislative, and judicial powers; and for the further reasons that the rates prescribed by the carriers and which the commission reduced were low, just, and reasonable, and that the rates prescribed
129 by the commission in lieu thereof were and will be for more than three years from the date of the filing of the bills unjust and inadequate compensation for the service rendered; that the making of the orders complained of was pro tanto depriving the complainants of their property without due process of law in violation of the 5th and 14th amendments of the Federal Constitution; that sections 15 and 16 of the act to regulate commerce in so far as they make the orders of the commission effective of their own force prior to a hearing in a court of justice upon the question of the reasonableness of the rates prescribed in said orders, are void as being in conflict with the Federal Constitution, which provides that all judicial power is vested in the courts of the United States; that section 16 of the act to regulate commerce is void for the additional reason that it prescribes that the carrier failing to comply with an order of the commission shall forfeit to the United States the sum of $5,000.00 for each day said carrier fails to obey said order, notwithstanding that the question of the unreasonableness of the rates has not been judicially investigated in any court of law and that it deprives complainants of their property without due process of law,

contrary to Article Five of the amendments to the Constitution of the United States.

The bills further allege that upon the hearings of the case before the commission no evidence was considered or offered which in any wise showed, or tended to show, that the rates complained of were excessive, unjust, or unreasonable, and that the commission entered the orders complained of without any justification in fact therefor and without any evidence or finding of fact that said rates fixed by the defendants before the commission were excessive, unjust, and unreasonable; that the circumstances and conditions surrounding the transportation of lumber existing on November 1, 1907, were
130 wholly different from those existing at the time when the rates in effect prior to said date were made; that the commission held as a matter of law that the continuance of such rates raised a presumption that the higher rates were unjust and unreasonable; that in such holding the commission acted erroneously, through a mistake and misapprehension of the law and without authority; that the rates so fixed by the commission are not and will not be sufficient to pay the cost of conducting the transportation aforesaid and any just or fair return upon the value of the property used in said transportation and bear no just or fair relation to the rates on through traffic moving over the complainants' lines, and that the rates prescribed by the commission will impose an undue and unreasonable burden, not only upon the complainants but upon the shippers of other commodities.

The complaints further alleged "that the rates so fixed by said order are unreasonable and confiscatory in that while it is not possible to accurately compute the actual cost involved in transporting a car of lumber from the States of Washington, Oregon, Montana, and Idaho to eastern destinations, nevertheless it is possible with substantial accuracy to determine whether or not the transportation of lumber aforesaid may be conducted without loss under the rates so fixed by said order, and your orators upon information and belief aver that the rates so fixed by said order are not and will not be sufficient to pay the cost of conducting the transportation aforesaid and any just or fair return upon the value of the property used in said transportation, and said rates so fixed by said order aforesaid bear no fair or just relation to the rates on through traffic moving over your orators' lines of railway, and the enforcement of said order of the defendant will impose an undue and unreasonable burden, not only upon your orators, but upon the shippers of other commodities."

131 This is the only allegation of confiscation contained in the bills.

To these bills the commission filed a demurrer and answer, the demurrer applying to those allegations of the bill which set forth that certain portions of the act to regulate commerce are unconstitutional, and by stipulation the questions raised by these demurrers are reserved for the court's decision, and with those questions the master has nothing to do.

In its answer the commission denies that the rates in effect and complained of before the commission were either unreasonable or unjust and will so continue to be. The answer sets forth the position of the commission with reference to the extent of the review which the court should exercise over the action of the commission, namely, that the court should not make any inquiry with reference to whether the rates prescribed by the commission are just and reasonable, except within the constitutional guaranty in the fifth amendment which prohibits the taking of private property without just compensation and due process of law. The answer alleges that the rates prescribed by the commission will afford just compensation for the service rendered and that the orders were made in due process of law. It is further alleged that the court should not hear and determine these cases upon any state of facts which were within the knowledge of the complainants and which they failed or neglected to present to the commission at the time of the hearings, nor upon any facts which may have arisen since said hearings, except such facts be first presented by an application for rehearing or otherwise to the commission. It is further alleged that the mere allegation that the rates of transportation prescribed by the defendant will not afford a fair compensation or will entail a loss or will be unremunerative ought not to be
132 considered, because such allegations are statements of conclusions or opinions of interested parties and do not have coupled therewith any statements of facts from which the reasonableness of a rate can be determined. It is further alleged that the commission is vested with the exclusive power of determining what are just and reasonable rates to be charged on traffic subject to the act to regulate commerce as amended; that the reasonableness of such rates is not open to judicial inquiry leading to an independent conclusion except such as may be necessary to protect the constitutional rights of complainants. The answer denies that the defendant made the orders complained of without any evidence that the rates complained of were in violation of the act to regulate commerce; and avers on the contrary that the orders were made after a full inquiry and due investigation which disclosed facts compelling the orders made by the commission.

There seems to be a sharp controversy between complainants and defendants as to the scope of the inquiry to be entertained by a Federal court in reviewing an order of the Interstate Commerce Commission which fixes and prescribes rates for the future. The complainants claim as follows: "The questions involved in all three suits are, however, practically identical, being simply the question whether the rates as advanced were unreasonable and whether the rates the commission put into effect in place of them are reasonable." It is apparent from the arguments in the briefs that the words "reasonable" and "unreasonable" are used by the complainants in the ordinary sense. The complainants argue that inasmuch as the interstate commerce act enjoins upon the commission the duty of prescribing a reasonable rate, that any rate which they may pre-

scribe which is not reasonable is unlawful and therefore without the scope of their authority, and that a Federal court may fully
133 review the action of the commission with reference to the reasonableness of a rate prescribed by them as an operating proposition above and beyond the mere question as to whether or not it violates the constitutional guaranties of just compensation.

The defendants insist that the court has no right to investigate the rate prescribed for the future by the Interstate Commerce Commission any further than to ascertain whether or not it violates the constitutional guaranties of just compensation and due process of law. The defendants claim that the only questions properly before the court are the following: (1) If this court finds that the order was regularly made, is not fraudulent or so arbitrary as to exceed the limits of regulation, should it make any other inquiry than as to whether the rates prescribed are confiscatory, (2) under the circumstances disclosed in this case should this court consider the reproductive cost of complainants' property as a material fact in throwing light upon the subject matter of the inquiry, (3) should evidence be considered by this court which has not been first presented to the Interstate Commerce Commission, there being no allegation that such additional evidence is newly discovered or could not have been presented to the commission, (4) should any of defendant's objections to the admissibility of testimony be sustained, (5) do the facts shown of record warrant a finding that the rates prescribed by the commission are confiscatory, (6) are the orders of the commission in any respect unlawful?

These suits involve rates for the transportation of lumber and forest products from points on the Pacific coast to points on and east of the Missouri and Mississippi Rivers. The facts and circumstances leading up to this litigation and out which it grows are as follows:

To the west of the Cascade Mountains from the crest of the
134 range to the Pacific coast is a large heavily timbered district known and dealt with in the record as the coast district, and the coast basis of rates applies to that territory. On the east side of the Cascade Mountains as far east as the city of Spokane, Washington, is another territory which is not referred to or much dwelt on in the testimony and the rates from which do not seem to be involved in these cases. Spokane is the center of another lumber-producing territory. In early years, before this industry at Spokane became sufficiently developed to invade the eastern markets, the old coast rates applied to Spokane and all territory west thereof, but later on, when the Spokane lumber industry outgrew their merely local markets, a differential rate slightly lower than the old blanket coast rate was installed for eastern shipments, so that Spokane forms the basis of a lower differential rate on eastern shipments. Coming farther east and continuing up the slope of the Rocky Mountains, we reach another district which is the basis of a still lower differential rate on eastern shipments known as the Montana-Oregon basis and typified on the Great Northern road by Kalispell,

Columbia Falls, and White Fish, on the Northern Pacific by Hamilton, St. Regis, and Missoula, Montana, and on the Union Pacific and Oregon Short Line Railroads by Boise, Idaho, and Baker City, Oregon.

As all the differential rates are, of course, controlled and regulated by the basic rate or the through rate east from the coast district, the discussion in these cases has been confined to the through rates. Prior to November 1, 1907, the following were the rates in effect from coast points to the larger destinations in the middle west: Coast to St. Paul, 40 cents per one hundred pounds; coast to Omaha, 50 cents; coast to Chicago, 50 cents; coast to Denver, 40 cents; coast to St. Louis, 52½ cents.

135 These rates had been in effect for about 15 years and were first installed at the time the Great Northern Road completed its road to the coast. A higher rate had been in effect prior to that time, but the installation of a 40-cent rate from the coast to St. Paul by the Great Northern Road compelled a reduction in rates by the other lumber-carrying roads, and the foregoing rates had been in effect since the latter part of 1893, or the very early part of 1894. On the first day of November, 1907, the roads duly installed a new tariff of rates, which advanced the rates on corresponding prices as follows: Coast to St. Paul, 50 cents; coast to Omaha, 55 cents; coast to Chicago, 60 cents; coast to Denver, 50 cents; coast to St. Louis, 60 cents.

Prior to November 1, 1907, the rates from the Spokane district were as follows: Spokane to St. Paul, 40 cents; Spokane to Omaha, 45 cents; Spokane to Chicago, 50 cents; Spokane to Denver, 40 cents; Spokane to St. Louis, 52½ cents. By the tariff installed November 1, 1907, these Spokane rates were advanced as follows: Spokane to St. Paul, 45 cents; Spokane to Omaha, 50 cents; Spokane to Chicago, 55 cents; Spokane to Denver, 45 cents; Spokane to St. Louis, 55 cents. Prior to November 1, 1907, rates in the third or Montana-Oregon district were as follows: To St. Paul, 40 cents; to Omaha, 40 cents; to Chicago, 50 cents; to Denver, 35 cents; to St. Louis, 49½ cents; and by the tariff installed November 1, 1907, these rates were raised as follows: To St. Paul, 43 cents; to Omaha, 43 cents; to Chicago, 53 cents; to Denver, 40 cents; to St. Louis, 52½ cents.

The conclusion of the commission was to practically restore the old rates with the exception that they permitted an advance of 5 cents per one hundred pounds on the freight destined to points east

136 of the Mississippi River. The commission drew a line which they called the Pembina-Port Arthur line. Pembina is a station on the international boundary, on the Red River of the North, near the western boundary of Minnesota. They drew a line through Pembina, running approximately due south, following the State lines approximately until they arrived at Sioux City, Iowa, then following the Missouri River down through Omaha and Kansas City, then the line of the Kansas City Southern Road to Port Arthur, Texas, and this line is known as the Pembina-Port Arthur line. West of

that line they restored the rates as they had been previous to November 1, 1907, denying the application for an advance. East of that line they permitted an advance of 5 cents per one hundred pounds.

There is no testimony in this record directly applicable to the effect upon the earnings of the complainants of this new rate established by the commission on through traffic. While it was not as much as the complainants considered reasonable, still on through traffic it was a distinct advance to the northern lines, but no testimony has been offered showing how this rate actually affected the earnings of the complainants.

The testimony of the complainants has been mainly directed to showing that the old rates in force for 15 years prior to November 1, 1907, were unreasonably low and did not produce their fair share of returns or remuneration to the roads. Their testimony has been largely confined to a statement of the conditions prevailing in 1893, when the old rate was first installed, and to a statement of the changed conditions prevailing in 1907, on account of which they claimed the advance in rates was justified.

The complainants admit that it is not possible for them to show the
actual cost of the transportation of a carload of lumber, the
137 actual value of that portion of their property which is devoted
to the lumber traffic, what relation the net returns on lumber traffic bear to the entire body of the net returns.

They have offered testimony substantially showing that in 1893, at the time of the installation of the old rates, the lumber industry upon the cost was in its infancy and unable to compete in the middle west with the white pine of northern Michigan, Wisconsin, and Minnesota. It is demonstrated that in 1893 the white pine of northern Michigan, Wisconsin, and Minnesota controlled the entire Northern Middle West market as far south as St. Louis. This was on account of the cheap rates of water transportation afforded by the Great Lakes and the Mississipi River. In 1893 the railroads had a large eastbound empty-car movement. There were no products on the coast sufficient to load for the eastern markets the cars required to carry to the coast all westbound traffic.

For the purpose of providing loads for the eastbound empty cars, and in that way getting back some proportion of the expense of hauling these cars east, the railroads installed the old 40-cent rate to St. Paul.

In 1893 the prices of labor and materials and all things which went into the equipment of railroads in the handling of traffic, as well as the price of lumber, were very low.

In the period intervening between that time and November 1, 1907, the situation has been reversed. The white pine of northern Michigan, Wisconsin, and Minnesota has practically disappeared from the market and is no longer an important element of competition. The Oregon and Washington lumber has practically acquired the old white-pine market. The lumber industry in the coast district has grown to enormous proportions and become an exceedingly pros-

perous industry. Prices of labor and materials have also increased to a very large extent, and the empty-car movement which in
138 1893 was from the west east is now from the east west, or a westbound empty-car movement now prevails. To what extent this is due to the large output of coast lumber has not been clearly shown. It appears to be partly due to other species of traffic, but to a large extent it is no doubt brought about by the very great increase in the shipments of lumber east.

On the other hand it as clearly appears that the price of stumpage, prices of labor, price of machinery, and all other elements entering into the lumber traffic have increased in proportion, as have the prices of those things which enter into the transportation increased.

It further clearly appears that during all these years these railroads have been prosperous. They have paid all the interest on their bonds and outstanding indebtedness, paid dividends upon their stock, spent vast sums of money in extensions, reproducing equipment and improvements, and in addition thereto have accumulated large surplus funds.

Two of the complainants in this action, the Great Northern road and the Northern Pacific road, have offered before the master a large volume of testimony consisting of an estimate made by their engineers and heads of departments as to what it would cost to reproduce their railroads. This estimate contemplates in the case of the Northern Pacific a period of 12 years for the reproduction of the road and in the case of the Great Northern a period of 8 years. In making the estimate it is not contemplated that any net returns for traffic or business done during the period of construction shall be had. In the case of the Northern Pacific the estimate approximates $700,000,000.00, and in the case of the Great Northern, $550,000,000.00.

It must be borne in mind that this cost of reproduction is not
139 an ultimate fact to be considered in the solution of these cases, but merely a collateral fact offered to influence the court's conclusion upon the ultimate fact as to the real value of the properties.

The evidence consists, as before stated, merely of estimates made by experts in the employ of the complainants. In the opinion of the master it is so remote and speculative as bearing upon a particular rate as to be immaterial and it would serve no useful purpose to attempt to make a finding as to what it would cost under the circumstances and conditions indicated in the estimate to reproduce the roads in question. The master's opinion would be merely a guess and no better than the guess of the court, and inasmuch as it is conceded and admitted by the complainants that the real and true value of the roads are never considered in the making of rates and have nothing to do with them we think this evidence so remote and speculative as to be absolutely immaterial in this case.

Finding of facts.

Upon careful consideration of all the evidence in this case I find the following ultimate facts which, in my judgment, is a fair analysis

of the evidence and illustrates the situation in reference to the rates in question.

I. In 1889 a 40-cent rate per one hundred pounds was installed by the Union Pacific system from Portland, Oregon, to Denver, Pueblo, and other Colorado common points. In 1893 a 45-cent rate was installed by this system from Portland to Council Bluffs and Omaha and other Nebraska main-line points. Concurrently with this rate a rate of 50 cents was made to Chicago and 52½ cents was made to St. Louis. In 1901 the 45-cent rate to Omaha and Council Bluffs
140 was raised to 50 cents and extended or blanketed to include Sioux City, Kansas City, and other points west thereof. The 50-cent rate to Chicago was also maintained.

II. In 1893 the Great Northern road was completed to the coast, and in the latter part of that year, or the early part of 1894, installed the superseded rates here in controversy, which were met by the Northern Pacific System and were as follows: To St. Paul, 40 cents per one hundred pounds; to Chicago, 50 cents; to the Mississippi River, 50 cents; to St. Louis, 52½ cents; to Denver, 40 cents; to Missouri River points, 50 cents.

The Union Pacific System never met the 40-cent rate to St. Paul by any of its Missouri River crossing rates. Its 50-cent rate to Omaha continued concurrently with the 40-cent rate to St. Paul from 1901 to November 1, 1907. But because of the 50-cent rate to Chicago from St. Paul, via the northern lines, it was obliged to blanket or extend its Omaha rate of 50 cents to Chicago.

III. At and prior to 1893 the lumber manufacturing industry in Washington and Oregon was in its early infancy. Except for purely local consumption the mills disposed of their products at points reached by water transportation. The volume of business continued to be inconsiderable for several years after the Great Northern road reached the coast.

IV. The superseded rates were made voluntarily by the carriers in 1893 avowedly for the purpose of stimulating the lumber industry in the coast territory and thereby producing a traffic
141 for the roads and more particularly and immediately for utilizing an eastbound empty-car movement then prevailing. At that time the balance of trade was against the coast territory and there was a well-defined eastbound empty-car movement from the coast.

V. In 1893, at the time the superseded rates were installed, the entire country was suffering from the effects of the financial panic of 1893; "hard times" prevailed and industries of all kinds were at a low ebb.

VI. In 1893 the lumber market of the northern Middle West from as far south as St. Louis was controlled and dominated by the white pine of Michigan, Wisconsin, and Minnesota, and continued to be so controlled for some years thereafter. The cheap water transportation afforded by the Great Lakes and the Mississippi River enabled the white pine to control this market until the supply be-

came inadequate to the demand and in fact exhausted. Thereafter this market became to a certain extent a battle ground between the Washington and Oregon lumber and the western pine from the Spokane district on the one hand and the southern pine on the other; but the unexampled revival of industry and increase in general business prosperity enjoyed by this middle district since 1897 has created such an enormous demand for lumber and forest products that this competition between western and coast lumber and southern lumber seems to have had but little effect in keeping down the price of lumber.

VII. The superseded rates of 1893 were voluntarily continued in force by the carriers until November 1, 1907, and during that period, especially during the last few *few* years thereof, under
142 this rate the lumber industry of this coast territory increased enormously. Many mills were built in the interior where they were solely dependent upon rail transportation. Except a limited number of mills situated at points like Portland, Oregon, the great majority of the mills engaged in this industry are wholly dependent on the railroads for an outlet to markets. As the industry has grown it has prospered and been profitable ever since the 40-cent rate went into effect. At the time of the hearing of these cases before the commission the amount invested in the lumber business in Oregon was approximately $60,000,000.00, exclusive of mills, logs, standing timber, and timber land. Approximately 40,000 persons were directly engaged in the industry. The annual pay rolls exceeded $20,000,000.00, and the annual output of lumber exceeded 2,000,000,000 feet. There is no sufficient data in the record from which to accurately state the number of lumber-producing plants in all this coast territory, the amount of the investment therein, or the number of men employed therein, but it clearly appears that there are many hundred mills in which are invested many millions of dollars and in which many thousands of men are employed, that the annual output has been constantly and rapidly increasing in recent years, and that the industry is the most important one of that region.

Part of the product of the mills of this coast territory are practically subject to no competition because of the superior nature of the lumber. On long timber there is little or no competition from other producing points. A certain portion of the lumber manufactured on the north Pacific coast can compete successfully with other lumber in any market. They there produce certain dimensions and qualities that are produced to but a limited extent for delivery elsewhere. These qualities are the choice portions of
143 the logs. Necessarily in producing them a large quantity of common lumber is also produced. The greater part of this common lumber finds its market locally or in the nearby States and in Colorado, Nebraska, and North and South Dakota. Comparatively little of this common lumber reaches the Missouri and Mississippi River territory. From 30 to 50 per cent of the finished output of the Oregon mills reaches the territory affected by the increase in rates.

The combined north Pacific coast States market about 5 billion feet annually as against approximately 19 billion feet of southern and white pine, showing that the southern and white pine predominate and fix the price in competitive markets.

During the summer of 1907 it became known and understood among the lumber trade that the then existing rates were to be increased. The industry immediately began to feel in some degree the effects of this unsettled rate situation. Purchasers at destination points began to postpone the placing of orders and to cancel orders already placed. The reasons given were that on account of the increase in rates lumber would be cheaper in the near future. One salesman testified that on a trip where he would ordinarily take orders for from 300 to 500 cars of lumber he was unable to get a single order because he would not guarantee the old rates. Dealers and purchasing agents of railroads refused to buy on the ground that after the advanced rates became effective there would be a falling off in the price of lumber caused by the surplus that would exist in producing territory which could not reach its former competitive markets under the advanced rates.

At and for some months prior to the hearing of these cases before the commission the lumber industry in this coast territory was greatly depressed and a large percentage of the mills had been shut down and were not in operation.

144 At the same time there also existed a financial depression, sometimes designated as the panic of 1907, which must also be considered in arriving at the causes of the depression then existing in the lumber business.

At the time the superseded rates were installed stumpage in the coast district was very low, some purchases being made at 25 cents per thousand feet. This low price continued for some time after that date and comparatively few mills took advantage thereof. As the area of the white pine in Wisconsin, Michigan, and Minnesota decreased the value of Pacific coast stumpage increased, as did also the value of the yellow pine stumpage of the Southern States. The increase in the price of Pacific coast stumpage has been gradual and steady since 1893. The greatest increase has occurred since 1902 and the largest part of that increase has taken place since 1905. Prior to the advance in rates in November, 1907, prices in Oregon ranged from $1.50 to $2.50 per thousand feet and along the Columbia River it was as high as $3.00. The majority of the millmen own their stumpage, but the majority of the stumpage is not owned by the millmen. Many large tracts are held by individuals and corporations that are not engaged in the manufacture of lumber. The price of logging has gradually increased until at the time of the hearing of these cases before the commission it cost between $5.00 and $6.00 per thousand feet to get logs to the mill. In some parts of Oregon it was even higher. The price of logs in the open market has likewise increased since 1893 from $2.50 to $3.00 per thousand feet in the year 1893 up to $6.00 in 1900. This price continued until 1902, then with

various increases and fluctuations to 1904 and 1905. In 1905 the price reached $9.00 per thousand feet. Following the Valparaiso and San Francisco disasters the price increased during 1906 and 1907
145 to $13.50 per thousand feet. After the announcement was made that the lumber rates were to be advanced the price of logs fell off $1.00 per thousand feet in the month of July, 1907; in August, 1907, the price fell off $1.50 per thousand feet with a corresponding fall in the month of September. And the total decrease from August to December was $4.00 per thousand feet. At the time of the hearing of these cases before the commission fir logs were sold for $9.00 per thousand feet in Portland, which price included a 50-cent towage charge.

The cost of manufacturing lumber has kept pace with the increased cost attendant upon all other industrial pursuits. From 1904 to 1907 the advance has been between 35 and 40 per cent in both labor and material. The increase in labor exceeds the increase in material, but the two make an average of about 40 per cent.

During the year 1906 the millman's average profit per thousand feet upon all classes of lumber produced by them ranged from $1.60 to $2.80. A lower profit was made by mills that bought logs in the open market or those operating where logging was more expensive. The higher profit was made by mills that owned their own stumpage, for which they charged themselves from $1.00 to $1.50 per thousand feet. Some of the mills that made a profit of $2.80 per thousand feet in 1906 made a profit of 26 to 50 cents per thousand feet in 1905. The unusual general prosperity of the year 1906 coupled with the extraordinary demand for lumber caused by the Valparaiso and San Francisco disasters undoubtedly account to a considerable extent for the sharp increase in profits in the year 1906.

In the year 1890 there was a decided predominance in the empty car movement eastbound amounting at that time to about 161.17 per cent over the westbound empty car movement on the Northern
146 Pacific Railway. In 1891 the predominance of eastbound empty car movement over westbound had decreased to 72.17 per cent and in 1892 it had further decreased to 4.35 per cent. In 1893 and all subsequent years down to 1907, conditions have been reversed and during this entire period there has been a large predominance of westbound empty car movement over the eastbound on the Northen Pacific road. Approximately the same condition prevailed during the year referred to upon the Great Northern road. In 1893, when the Great Northern was completed to the coast, the westbound loaded freight car mileage on the main line between Havre, Montana, and Seattle, Washington, was 3,688,568 as against 2,366,546 eastbound. At the same time the westbound empty car mileage was 607,088 as against 1,922,262 eastbound. In 1897 the westbound loaded mileage was 7,104,181 as against 10,050,979 eastbound, whereas the empty westbound mileage was 3,527,377 as against only 576,071 eastbound empty mileage. In 1906 the westbound loaded mileage was 22,939,649 as against 32,323,906 eastbound loaded mile-

age, whereas the westbound empty mileage had increased to 11,860,201 as against 1,806,850 eastbound empty mileage.

Ever since 1903 the condition in respect to the predominance of empty car mileage has been changing until in 1907 the westbound empty car movement greatly predominated over the eastbound empty car movement. This result was not wholly due to the increase in the lumber traffic, but in part to the very great increase in the volume of other important commodities shipped from the west to the consuming markets of the east. The establishment of manufacturers of finished products in the west has to a certain extent diminished the volume of manufactured products moving from the east to the west.

In 1890 upon the Northern Pacific the predomination of west-
147 bound loaded car mileage over eastbound loaded car mileage amounted to 57.23 per cent, while in 1906 the predomination of eastbound loaded car mileage over westbound loaded car mileage amount to 43.40 per cent, and in 1907 to 3.2 per cent. This sharp and sudden decrease in the percentage of eastbound loaded car mileage over westbound loaded car mileage in the year ended June 1, 1907, was, however, not normal; but due to temporary and unusual causes, viz., the construction of the Chicago, Milwaukee & St. Paul coast extension and the Seattle and Portland line, most of the supplies for which were taken out over the northern lines, and also to the unprecedented storms, snow-fall and excessive cold weather prevailing in the winter of 1906 and 1907, which resulted in a practical suspension of business on the through lines for three months.

The empty car movement westward predominates to a greater extent on the Great Northern and other lines on which the products of mines constitute a greater proportion of the traffic handled than forest products, than on the Northern Pacific line, which hauls a much larger percentage of forest products than do the other carriers. For the year ending June 30, 1907, the percentage of tonnage constituting all products of mines out of the total number of tons carried on the Great Northern Railway was 51.75 per cent, and all forest products 14.50 per cent. On the Northern Pacific the percentage of mine products out the total tonnage was 21.05 per cent and of the forest products 37.38 per cent. A similar situation is shown to have existed on the Union Pacific system during the same period.

During all the period involved in this discussion, viz., from 1893 to November 1, 1907, the cost of operation of the complainants' roads
148 has constantly increased. This increase is fairly illustrated by the testimony of the witness R. I. Farrington relating to the cost of operation of the Great Northern road. He testifies: "Taking the year 1895 as one hundred per cent, the cost per freight train mile for the calendar year 1900 was 143.82 per cent of 1895; for the eleven months ended November 30, 1907, the cost per freight train mile was 207.7 of 1895. Of course in 1907 it is more than twice what it was in 1895 per freight train mile. Per freight car mile, using 1895 as one hundred per cent, the cost in 1900 was 126.19 per cent, and the cost in 1907 was 162.77 per cent. Consequently it cost nearly

63 per cent more to haul a freight car one mile in 1907 than it did in 1895."

Concurrently with this increase there has been a persistent and well-directed effort on the part of all the carriers to wisely economize in the matter of cost of operation, and such results have been achieved as to preclude the idea that the increase in the cost of operation is due to any failure in wise and economic operation. The testimony clearly indicates that all these roads are wisely and economically handled, at least so far as cost of operation is concerned.

Since 1897 the lumber industry of this coast and Spokane territory has developed and increasd so rapidly that it has constantly outrun the capacity of the roads to handle it, and these roads have been compelled ever since 1897 to spend vast sums in improvements, extensions, and for more powerful equipment in order to keep pace with the ever-increasing eastbound traffic from those points. Other species of eastbound traffic have also increased, but the greatest increase is shown to be in the lumber traffic.

During all this period, and particularly since 1897, these roads have earned satisfactory incomes. They have paid all interest on their bonds and indebtedness, all operating expenses, fairly satis-
149 factory dividends on their stock, vast sums in improvements and extensions, and have accumulated handsome surpluses, and clearly appear to have been on the whole prosperous and to have earned fairly satisfactory net incomes from their transportation.

By the orders here under discussion the commission restored the rates in force immediately prior to November 1, 1907, as far east as the so-called Pembina-Port Arthur line and to the territory east thereof, permitted an advance of 5 cents per one hundred pounds, which operated to fix a rate of 45 cents per one hundred pounds over the northern lines to St. Paul, Minneapolis, and Duluth. By this order a rate of 50 cents per one hundred pounds over the Union Pacific system to Omaha and Missouri River points on said Pembina-Port Arthur line was established. The short-line distance over this system from Portland to Omaha is 1,799 miles and to Kansas City and other Missouri River points is 2,030 miles. From the evidence and exhibits offered it fairly appears that this 50-cent rate over this system will result in a revenue of 5.56 mills per ton mile to Omaha and 4.92 mills per ton mile to Kansas City, and that such revenue is far below the average revenue per ton mile on any of the complainant roads, and that this 50-cent rate over this system to Omaha is a very low rate. The distance from Tacoma, Washington, to Minneapolis via the Northern Pacific lines is substantially 1,896 miles, from Portland to St. Paul 2,052 miles, and from Astoria to St. Paul 2,072 miles. Omaha and St. Paul are on a parity as bases of through rates, and are so considered by the commission and by rate experts. (See commission's decision in Spokane v. Northern Pacific Ry. Co., decided June 7, 1910, 19 I. C. C. 162.) By the orders here under discussion the commission prescribed a rate of 45 cents per one hundred pounds over the northern lines to St. Paul, Minneapolis,

150 and Duluth. This rate will undoubtedly result in a revenue to the northern lines measurably less than the revenue yielded to the Union Pacific line by the 50-cent rate to Omaha. Under the old 40-cent rate to St. Paul the revenue per ton-miles accruing to the northern lines was 3.90 mills, and under the 50-cent rate installed November 1, 1907, would have been 4.87 mills from Portland to St. Paul. From Tacoma to Minneapolis under the 40-cent rate it was 3.98 mills per ton-mile, and under the November 1, 1907, 50-cent rate it would have been 5.27 mills.

Evidence was offered by the Great Northern Railway Company and the Northern Pacific Railway Company for the purpose of proving the value of the systems of railroads owned and operated by each of said companies, respectively. This evidence consisted primarily of schedules of all items of physical property based upon the present cost of reproduction. These schedules were prepared in great detail, and the evidence indicates that they are the result of extended examination of records of these companies, inspection of the properties, and consideration by competent experts of the various questions involved in an appraisal of this kind. These schedules were examined and checked by the defendant during a period of about six months pending the hearing of these cases. The record of the companies were open to the force employed by the defendant for that purpose, under the direction of an engineer selected by it, and while it is probable that in view of the large volume of records bearing upon the cost of construction of various items of the property the defendant was not able to fully examine all the records in that regard, it appears that they were thrown open to it and opportunity offered for as full and complete examination of them as it elected to make. At the conclusion of this examination the engineer selected by the defendant appeared before the master, and
151 evidence produced by him is in the record. It is sufficient to say that while there are differences between his conclusions and those reached by the witnesses produced by these companies on this subject, those differences appear to be minor in their character and relation to the whole subject. The basis adopted by these companies for the preparation of these schedules is approved and supported by the engineer employed by the defendant. So far as the examination by the defendant's engineer went, it is apparent that the results reached are not widely apart from those reached by the engineers of the railroad companies.

Evidence was also offered by the two companies in question of the values of their properties based upon computations from market prices of stocks and bonds for fairly representative periods. This method of ascertaining the value of railroad property seems to have the support of a number of decided cases and is of value in the consideration of questions of this character.

The record contains evidence of the amount of outstanding stocks and bonds of these two companies, together with a full showing for

recent years of current results of operation. There are in evidence exhibits showing gross revenues, operating expenses, taxes, net revenues, amounts of interest paid upon obligations, dividends paid, amounts appropriated from income for various purposes, and in fact all of the essential statistics necessary to a clear understanding of the results of the business of these two companies during the period covered by the figures.

Of the methods made use of in these cases for the purpose of indicating the approximate value of these properties it is perhaps sufficient to say that each method seems supported by ample judicial authority and to be of value in the consideration of the complex questions involved.

152 In the determination of the issues presented by these cases, involving as they do rates upon a single item of traffic, the value of the total properties of these companies is of only indirect bearing. The defendant commission appears to have reached this conclusion and to be of that opinion because in a case of like character involving rates on lumber from southern and southeastern points of production to the Ohio River and north thereof it held to that effect. (Central Yellow Pine Association v. Illinois Central Railroad Company, 10 I. C. C. 529.) The master does not understand that these companies offer this evidence upon the theory that it will directly aid in the determination of the issues here involved. They do offer it for the purpose, as stated, of demonstrating that the return during recent years upon the fair value of these properties has not been and is not excessive; they argue that if the rates upon lumber and other forest products embraced within their tariffs filed November 1, 1907, are neither unjust nor unreasonable, the results of the operation of these companies justify the effort thus made to increase revenues to meet increased cost of operation.

In the conclusion at which the master has arrived it seems unnecessary to consider this argument further than to say that from the evidence it is reasonably plain that the value of the property of these companies devoted to the public service is substantially above the amount represented by the par value of their outstanding stocks and bonds.

The evidence clearly shows that these lines of railroad are well located and maintained; that they are efficiently operated and occupy a portion of the country from which it is reasonably plain that under normal conditions they may expect a constantly growing vol-

153 ume of traffic; they seem to have, from the vitality of their own organizations, as well as that of the industries tributary to them, the cities, towns, and general character of the country through which they operate, all of the valuable elements ordinarily comprehended within the term "going concern," and from the fact that they have been established and in operation for many years and during recent years at least with fair results, they each have the advantage which flows from long and favorable relations with the shipping public over and above a new road or roads constructed or operated

through the same territory. These considerations in every line of business indicate important elements of value over and above mere cost of construction, and justify the conclusion which is fortified by ample authority that there exist in these properties large elements of value of this character.

The defendant in these cases has directed attention to the annual reports of these companies and other forms of statistical information tending to prove favorable results from operation, and it is sufficient to say in considering the arguments thus advanced that they are largely supported by the statistics referred to, and lead to the necessary conclusion that the properties contain elements of value in large measure as a direct result of the successful operation referred to.

It may properly be said, however, in considering the arguments offered by the defendant that these companies have been able to pay interest and dividends at a fair rate and accumulate surplus funds which have been appropriated from income and reinvested in the property, that such conditions are necessary, within proper limits, in order to enable companies of this kind to meet the tremendous increases in cost of operation incurred in recent years and the growing demands upon them for increased facilities to accommodate the growing commerce of the country through which they pass. Upon
154 the whole record I find no evidence that tends to indicate that during the period covered by the evidence in this case the results from operation of either of these companies were in any degree excessive.

On the contrary, upon a more critical consideration of the question of the true value of these properties in the light of the rule laid down by the Supreme Court of the United States in Smyth v. Ames, 169 U. S. 522, and subsequent decisions, if that were necessary or immediately germane to the issues here presented, it is probable that the net returns in recent years have been below rather than above the measure of a fair return upon the reasonable value of the properties used in the public service as defined in those decisions.

Conclusions of Law.

Upon consideration, the master has adopted the following conclusions of law which, in his judgment, govern and control the decision of these cases:

(1) A just and reasonable rate within the meaning of the interstate commerce act is a rate which (a) furnishes to the carrier just compensation for the services rendered and fairly, reasonably, and justly recognizes and considers his common rights and interests in the traffic under consideration; (b) which fairly, reasonably, and justly recognizes and considers the interest of the public in such traffic; (c) which fairly, reasonably, and justly recognizes and considers the interests of the shippers in such traffic, and (d) which on its face does not manifest or evince any arbitrary violation, perversion or disregard of the spirit or intent of the interstate commerce

law, but appears to have been made or promulgated fairly, justly, and reasonably in accordance which the fundamental principles of the law.

155 (2) The Constitution guarantees just compensation for private property devoted to a public use and under this guaranty a carrier is entitled to charge rates which are justly compensatory for the services rendered. But inasmuch as it is his entire property which is devoted to the public use he is only entitled to just compensation for the entire use, and a particular rate need not in and of itself furnish just compensation for the particular service rendered, so long as it does not so affect the general body of net returns as to reduce them below what is just and reasonable.

(3) Unless it appears that a single rate so affects the general body of net returns as to reduce them (the net returns) below what is just and reasonable, confiscation cannot be predicated upon it.

(4) In determining the justness and reasonableness of the net returns to a railroad a principal consideration is the value of the property devoted to the public use; and in determining this value the reproductive value, or a just estimate of what it would presently cost to reproduce the properties as they presently stand, is of considerable material aid.

(5) But where the question under consideration is the justness and reasonableness of a single rate on a single commodity, because it is impossible to determine the value of that portion of the properties involved in and devoted to the traffic in a particular commodity, the value of the properties as a whole bears so remotely on the proposition as to be immaterial and irrelevant.

(6) And the reproductive value being only a collateral fact offered to influence the court's conclusion as to the ultimate fact of real value is too remote and speculative to be material or relevant to the question of the justness and reasonableness of a single rate.

156 (7) The Interstate Commerce Commission is an administrative tribunal and the wisdom and expediency of the lawful exercise of the discretion delegated to it under the Constitution and the statutes is not reviewable by the courts.

(8) It is, however, limited in the exercise of its authority, first, by constitutional limitations, second, by specific limitations contained in its organic act, and third, by the spirit and intent of its organic act and the fundamental principles underlying its organic act.

(9) An administrative tribunal is not as free to act within the scope of its limitations as is a legislative tribunal, because in addition to its constitutional and statutory limitations it is further limited by the spirit, intent, and purpose of its organic act and the fundamental principles underlying it, and because of which it was enacted.

(10) Federal courts of equity have the power and are charged with the duty to relieve from orders of the Interstate Commerce Commission which deprive complainants of their property without due process of law or take it without just compensation, from orders

which are beyond the delegated power of the commission, and also from orders which evidence so unreasonable and arbitrary an exercise of its power and which are so inherently inconsistent with and violative of the spirit and intent of the interstate commerce act as to be substantially without, though formally within, their delegated authority.

(11) An order which on its face is inherently inconsistent with the fundamental principles of rational justice and palpably violates and perverts the spirit and intent of the interstate commerce act,
157 though in form within the limits of delegated power is in fact beyond those limits, and is an unlawful order and one which results in taking of property without due process of law.

(12) On pages 39, 40, and 41 of volume one of the record appears certain objections entered by the defendant to the admission of evidence in these cases. Objection number one subdivided into sections A and B object to any testimony which does not show that the rate fixed by the Interstate Commerce Commission is confiscatory of the property of the carriers within the meaning of the fifth amendment to the Constitution of the United States, and to any testimony which tends to show that such rate is otherwise (aside from the question of confiscation) unreasonable.

This objection is overruled for the reason that while a rate may not be confiscatory it may yet be so unjustly discriminatory and unduly preferential and may so arbitrarily violate the fundamental principles of rational justice and the spirit and intent of the interstate commerce act as to amount to the taking of property without due process of law; and any evidence which tends to show such a situation is admissible and can be considered by the court.

Objection number two is based upon the claim that the allegations of the bills are not broad enough to amount to an allegation of confiscation.

This objection is overruled. The bills allege that the rates fixed by the commission are so unremunerative and so far below what is just and reasonable as to be confiscatory. I think the allegations are broad enough to admit of proof of confiscation. The Constitution provides that no property shall be taken for public use without just compensation. The interstate commerce act provides that all rates shall be just and reasonable. The language of these two
158 provisions means the same thing and by these two provisions of law a point is fixed below which a carrier cannot be compelled to go and above which it may not lawfully go. Anything less than that which is just and reasonable will necessarily amount to confiscation, and therefore when a rate is attacked on the ground that it is less than that which is just and reasonable it is in effect an allegation of confiscation and permits the courts to inquire into the rate to the extent of ascertaining whether or not it is so low as to be less than just and reasonable.

Objection number three is based on the claim that no new and additional evidence is admissible for any purpose unless the complainants

have first presented or offered to present the same to the commission for its consideration, or in effect taken such proceedings as amount to an application for a new trial.

This objection is overruled upon the authority of the Court of Appeals for the eighth circuit in Missouri, Kansas & Texas R. R. Co. v. Interstate Commerce Commission, 164 Fed., 645, wherein it is held: "It is not intended that the hearing in such a suit, whether it be of the one kind or the other, shall be confined to an ascertainment of what was determined by the commission and to a consideration of the sufficiency of the facts as determined by it to sustain the order; but on the contrary the hearing may be de novo, and may include the taking and consideration of evidence other than that before the commission."

Objections 4, 5, and 6 are elaborations of the principles sought to be enforced in objection number three.

Objection number four proceeds upon the principle that no new or additional evidence is admissible unless it is what is known in law as newly discovered evidence; that is, evidence unknown to the complainants at the time of the hearing before the commission.

159 Objections numbers 5 and 6 proceed upon the principle that no such newly discovered evidence can be offered unless it has previously been offered to the commission for its consideration and the commission has failed or refused to hear it.

The point of these objections is that it is unfair for a carrier to fail to take advantage of the opportunity offered under the law by the commission for a full hearing and thereafter apply to the courts to protect it against orders which might never have been entered had the carriers so taken advantage of their opportunity for a full hearing.

In such a case a carrier would be without any standing in a court of equity, for he would not be coming into a court of equity with clean hands. But where it appears that a carrier honestly and in good faith has presented his case to the commission on a complaint, and in good faith presented to the commission for its consideration all the evidence then in its possession, it ought not to be, and is not, precluded from presenting to the courts in a suit for an injunction any other evidence relative and material to the suit of which it may avail itself. The objection seems to proceed upon the theory that a hearing before the commission is like a suit at law, and that the commission's decision is dependent upon the record, and that to disturb the decision by other evidence can only be done by the presenting of newly discovered evidence not within the knowledge and possession of the carriers at the time of the trial, and that the decision can only be disturbed on this ground by a proceeding before the commission analagous to a motion in a suit at law for a new trial upon the ground of newly discovered evidence.

This theory is quite at variance with the defendant's other theories and claims as to the powers of the commission. The commis-

160 sion is not confined in its decision to the consideration of the

particular evidence submitted to it in any hearing, but is supposed to possess all knowledge and wisdom pertaining to the matters under consideration, and is at liberty to use all knowledge it may possess or obtain by any means both within and without the record. And the evidence actually submitted to the commission in any case is as a rule but a small part of the knowledge upon which the commission bases its decision. We think the court ought not to decline to hear a complainant on the ground that he has not first presented all his case to the commission, unless it appears that his failure in this respect amounted to a fraud on the commission and was a deliberate neglect to avail himself of the opportunities offered by the commission for a full hearing. Nothing of the kind appears in this case, and the objections to the new and additional evidence are overruled.

Discussion.

"Section 1 of the act to regulate commerce" provides, among other things, "all charges made for any service rendered in the transportation of passengers and property * * * or in connection therewith, shall be just and reasonable; and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful."

This section further imposes upon common carriers the duty to furnish transportation at "just and reasonable rates applicable thereto."

Section 2 defines, prohibits, and declares unlawful any unjust discrimination between persons by means of special rates, rebates, drawbacks, or other devices, and section 3 declares it to be unlawful for any common carrier to make or give any undue or unreasonable preference or advantage to any particular person, company,
161 firm, corporation, or locality, or any particular description of traffic in any respect whatever, or to subject such persons, entities, localities, or particular descriptions of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Section 15 provides that the commission is authorized and empowered and it shall be its duty whenever, after a full hearing upon a complaint made as provided in section 13 of the act, or upon complaint of any common carrier, it shall be of the opinion that any of the rates or charges whatsoever demanded, charged, or collected by any common carrier or carriers subject to the provisions of this act for the transportation of persons or property as defined in the first section of this act, or that any regulations or practices whatsoever of such carrier or carriers affecting such rates, are unjust or unreasonable, or unjustly discriminatory, or unduly preferential or discriminatory, or otherwise in violation of any of the provisions of of this act, to determine and prescribe what will be the just and reasonable rate or rates, charge or charges, to be thereafter observed in such case as the maximum to be charged; and what practice or regulation in respect to such transportation is just, fair, and reason-

able to be thereafter followed; and to make an order that such carrier shall cease and desist from such violation to the extent to which the commission find the same to exist and shall not thereafter publish, demand, or collect any rate or charge for such transportation in excess of the maximum rates or charges so prescribed, and shall conform to the regulations or practice so prescribed. An analysis of this power and authority resolves it into three divisions. The commission has power to interfere (a) when rates are unjust and unreasonable, (b) when the rates and also the practices and con-
162 duct of the business are unjustly discriminatory or unduly preferential, and (c) when specific requirements of the statute are violated.

And the remedies which they are authorized to determine and prescribe for the future are: (a) Just and reasonable rates, (b) just, fair, and reasonable regulations and practices, and (c) orders compelling the abandonment of illegal practices consisting in violations of specific requirements of the statute.

A principal question in these cases is as to the extent of the powers thus conferred on the Interstate Commerce Commission and particularly as to the extent of the powers stated in subdivision (a).

While the bills allege that the rates fixed by the commission are so low, unjust, and unreasonable as to result in an undue preference of the lumber traffic over other descriptions of traffic and discrimination in its favor against other species of traffic, still they nowhere point out any particular class or species of traffic which is discriminated against, and nowhere point out where, to what extent, or in what manner such discrimination is had, nor state any facts upon which discrimination and undue preference can be predicated.

The substance of those allegations of the bills with which the master is concerned is that the rates fixed by the commission are so low and unremunerative as to be unjust and unreasonable, and therefore the commission exceeded their power in prescribing them, and are taking the carriers' property without due process of law, and further that because the rates are unjust and unreasonable and less than what is just and reasonable they are confiscatory and in violation of the constitutional guaranty of just compensation.

It will be seen therefore that the cases turn almost entirely upon the extent of the power conferred upon the commission to fix
163 rates for the future. The defendant claims that in the matter of fixing rates for the future under the circumstances and within the statutory requirements conferring jurisdiction to inquire (such as complaint, notice, full hearing, etc.), their power is as full, plenary, and absolute as is the power of Congress itself: that its reasons, motives, and discretionary powers may be as broad and plenary as those of Congress, and that its conclusions can only be attacked on constitutional grounds as a confiscation.

The complainants, on the other hand, claim that this power is a limited power, limited not only by the constitutional guarantees of just compensation and due process of law, but limited also by the

terms and language of the statute itself, and that if it can be shown that any rate fixed by the commission is not just and reasonable, but is unjust and unreasonable in and of itself, it is an unlawful rate and beyond the power of the commission to prescribe or enforce.

The solution of this proposition depends entirely upon the interpretation to be put upon the words just and reasonable. If the interpretation of these words is to be based upon their widest sense, and upon all the reasons and considerations which Congress might entertain in the enactment of a statute including all grounds of public policy and all those considerations upon which rest the exercise of police power, then the position of the defendant is correct.

If, on the other hand, they are to be interpreted in a common and limited sense, and in a business sense, as applied to the business transactions between shippers and carriers, then this contention of the defendants is not correct, and the court may determine whether or not these rates are in truth and in fact in and of themselves just and reasonable and therefore lawful, or unjust and unreasonable and therefore unlawful, and in the latter event enjoin their
164 enforcement as an unlawful and unwarranted exercise of power, which amounts to the taking of property without due process of law.

What, then, is a just and reasonable rate within the meaning of the interstate commerce act?

In the first place the Constitution supplies an absolutely essential and necessary ingredient or characteristic. It guarantees just compensation for private property taken for a public use and any rate which violates this guaranty is a void rate. In Missouri, Kansas & Texas R. Co. v. Interstate Commerce Commission, a case from the Eighth Circuit in 164 Fed. 645, the court said: "Its (the commission) determination or action does not and cannot preclude judicial inquiry into the justness and reasonableness of the rates within the meaning of the constitutional guaranty, for that is a judicial question." "Neither Congress nor any legislative or administrative body acting by its authorization, can competently establish rates for the transportation of property in interstate commerce that will not admit of the carrier earning such compensation for the service rendered as under all circumstances is just and reasonable, since such action would deprive it of its property without due process of law and would be a taking of its property for public use without just compensation in violation of the fifth amendment to the Constitution." Just compensation means the fair and reasonable value of the property taken. In condemnation proceedings it means the fair and reasonable value of the property for the highest use to which it can fairly and reasonably be put.

Applied to transportation rates it must mean the fair and reasonable value of the particular service rendered, provided such services are rendered under normal circumstances. It is frequently said that regard must also be had to the rights of the public and to the interests of the shippers. In my judgment this means that a rate

165 may not be so high as to prevent the free access by the public to those commodities which they desire and require; or, in other words, so high as to prevent the free movement of the traffic, nor may a rate be so high as to practically divert a shipper's profit into the treasury of the carriers, and thus destroy the shipper's business. But these considerations are in a measure secondary and can only apply after the first requisite of just compensation has been complied with. The prime consideration is the constitutional consideration of just compensation to the carrier. He is devoting his labor and property to a public use and under the law is compelled to do so. He may not refuse the traffic. He must respond to its demands. But for his service and his property he is entitled to just compensation, and no law can deprive him of it.

It is further said that just and reasonable rates need not necessarily guarantee a profit to the carrier. But this is simply another way of applying and illustrating the rule that a person is entitled to the fair and reasonable value of his property for the highest use to which it can reasonably and fairly be put.

Of course a poorly and injudiciously projected road, which is not a reasonable commercial necessity and is not commercially justified, and which is poorly and wastefully operated, cannot expect to extort a profit out of the patrons which may be necessarily dependent upon it.

It is the value of the property for a reasonable use that is to be determined. An expensive house situated in the midst of a swamp would add no considerable value to the property, and the owner would not be entitled to a compensation for the cost of his house.

166 A house well located commercially may by ill usage depreciate, and in determining its value for any purpose the expense of restoration would have to be considered and deducted.

Reasonable rates are therefore always to be based upon normal conditions and determined with a view to whether or not the road is reasonably justified as a commercial enterprise, is a reasonable commercial necessity, is normally operated with reasonable economy and skill.

But when all is said of those characteristics of a just and reasonable rate it is still true that the distinguishing characteristic of a just and reasonable rate is just compensation, and that these other characteristics are what is known in logic as incidental characteristics.

The constitution fixes this absolute point below which no carrier can be compelled to go. The interstate commerce act does not permit him to go above it. Anything more than this is a violation of this law, and anything less is a violation of the constitutional rights.

The next question is, How far does this distinguishing characteristic extend?

Inasmuch as it is the entire body of the property which is devoted to the public use, does this characteristic extend merely to the entire body of net revenues returned to the carriers, or does it extend to

and characterize each particular rate and segregated element of the income?

In theory and on principle this latter proposition ought to be true. Each rate ought in and of itself, in order to be just and reasonable, furnish just compensation for the service rendered, and if each rate were just and reasonable the entire body of net returns would also be just and reasonable. In Missouri, Kansas & Texas R. R. Co. v. Interstate Commerce Commission, cited above, the court said: "Reasonably interpreted the statute, by which alone the Interstate
167 Commerce Commission derives its power, unmistakably requires that all rates prescribed thereunder shall be just and reasonable within the constitutional guaranty, and also that they shall not be unjustly discriminatory or unduly preferential; and those requiremnts plainly operate as limitations upon the power of the commission."

No doubt it is the spirit and intent of the interstate commerce act that each particular rate shall be in and of itself a compensatory rate, and that the theory of the statute is that if each rate is in and of itself just and reasonable the entire body of net returns will also be just and reasonable.

But because of the many stubborn and obtrusive difficulties in the way of the practical application of this proposition, because it is practically impossible with any degree of satisfactory accuracy to determine the cost of a particular traffic, or the proportion of the company's property devoted to its use, or whether or not in and of itself it yields a profit, and because also the carriers have a right to and frequently do temporarily carry commodities at less than cost for purposes of ultimate future benefit; and because also it is sometimes necessary and requisite to compel them to carry commodities at less than cost on grounds and for reasons of public policy, it has been held in actions based upon the charge of confiscation through the reduction of a single rate or segregated portions of the general body of business, that this distinguishing characteristic of just compensation does not extend to a single rate and need not be considered in determining whether or not it is just and reasonable beyond the question as to whether or not it so affects the general body of net returns as to reduce them to less than just compensation.

In other words, confiscation cannot be predicated upon a single rate in and of itself, particularly because it is impossible
168 to ascertain the true facts in reference thereto, but can only be predicated upon a single rate as it relates to and affects the general body of net returns. So that in inquiring as to the justness and reasonableness of a particular rate this constitutional question need not be considered any further than the relation of the rate to and effect upon the general business of the carrier and its entire body of net returns.

It is contended that the following cases, decided by the judges of the Eighth Circuit and the Supreme Court, are authorities against this contention and establish the doctrine that a rate must be com-

pensatory in and of itself. Southern Ry. Co. v. St. Louis Hay Co., 214 U. S. 297; Stickney v. Interstate Commerce Commission, Supreme Court, January 10, 1910; Peavey & Co. v. Union Pacific Ry. Co. (Eighth Circuit), 176 Fed. 409.

It will be observed, however, that those cases involved charges for incidental services rendered by and to carriers in aid of transportation, which charges are by the terms of the interstate commerce act required to be stated separately. The charges in the Hay case were charges for a special privilege "in no sense a part of the transportation and outside thereof."

The charges in the Stickney and Peavey cases were charges paid by the carriers to third persons who rendered services in aid of transportation, and section 15 of the interstate commerce act makes it the duty of the commission to determine the value of those services in and of themselves at a just and reasonable rate.

Manifestly an order made in the exercise of this power, absolutely or in part destroying an incidental charge considered to be just and reasonable in and of itself, is confiscation of the grossest kind
169 in addition to being a gross abuse and perversion of authority and the taking of property without due process of law.

It seems clear, therefore, that in cases involving a single rate, such as are the cases at bar, unless it is clearly shown that the relation and effect of the single rate to and upon the general body of net returns is such as to reduce the general net returns to less than that which is just and reasonable, no case of confiscation has been made out.

The defendant claims that this conclusion must necessarily determine these cases in its favor. There is no evidence in the record clearly showing, or indeed attempting to show, that this lumber rate prescribed by the commission will so affect the general body of net returns as to materially reduce them from what they have been, and it is conceded on all sides that the carriers are and have been fairly prosperous, and that their net incomes have been fairly satisfactory at least.

The carriers concede that they are unable to determine the cost of this traffic in and of itself, and that they are unable to say with any satisfactory accuracy whether or not they make a profit upon it, but they have all conceded that in their judgment, speaking as experts, the lumber traffic has not been confiscatory and has not been performed for less than cost.

And the defendants claim that no confiscation having been shown, it necessarily follows that the rates are just and reasonable.

It must be remembered, however, that this rule confining the inquiry as to confiscation in the matter of a single rate to the relation and effect of that rate to and upon the general body of net returns is not a rule based upon theoretical justice, but is a rule of convenience compelled by the exigencies of the situation. It is founded upon compulsion, and not upon principle. Furthermore, like
170 all other rules of law, it is intended and promulgated in the

interests of justness and reasonableness, and not to promote injustice and unreasonableness. It cannot be used as a shield behind which the commission may hide, and with which they may protect themselves in the arbitrary and inequitable exercise of their powers. It is true the commission is an administrative body, exercising delegated legislative powers, and that the wisdom and expediency of the lawful discharge of their administrative powers may not be questioned by the courts.

Nevertheless, it must be remembered that the power of the commission to fix and determine rates is a limited power. In Missouri, Kansas & Texas Ry. Co. v. Interstate Commerce Commission, 164 Fed. 645, the court said: "Power to determine and prescribe what are just and reasonable maximum rates to charged in interstate commerce is in a limited way conferred on the Interstate Commerce Commission by section 15 of the interstate commerce act."

It is not true that within the specified limits of its jurisdiction an administrative body is as untrammelled as is a legislative body. Within constitutional limitations a legislative body is absolutely beyond control and may pass bad, vicious, injudicious, and calamitous laws.

But an administrative body is not so free to do as it pleases, but in addition to those specific limitations pointed out by the constitution and the particular provisions of its organic law, is always and forever limited and controlled by the spirit and intent and the fundamental principles of the organic law creating it. It may not, therefore, while acting within the forms of its delegated powers, promulgate rates and regulations which in effect violate the spirit and intent of those powers.

It is the intent and purpose of the interstate commerce act
171 that the commission shall determine and prescribe just and reasonable rates, just and reasonable regulations, just and reasonable conduct and practices, and shall prevent unjust discrimination and undue preferences.

It shall not make or permit any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or particular description of traffic "in any respect whatsoever," nor shall it subject such persons, entities, localities, or particular descriptions of traffic, to any undue or unreasonable prejudice or disadvantage "in any respect whatsoever."

They must not only be just and reasonable so far as the matter of compensation is concerned, but must be further just and reasonable in all respects. They must exercise their power in a just and reasonable manner and arrive at their conclusions through just and reasonable processes, and those conclusions must be just and reasonable in all respects. They may not be unjust and unreasonable in any respect whatsoever. They cannot content themselves with arriving at a result technically and in terms and form just and reasonable through an arbitrary, unjust, and unreasonable exercise of their powers. Justness and reasonableness must permeate, tincture, and

characterize the entire proceeding, and the result must also be in truth, in spirit, and in fact just and reasonable, and not merely so in form and terms.

A rate may be unassailable on constitutional grounds, may be absolutely free from confiscatory features, and yet in and of itself be so inherently vicious, unfair, and unjust as to manifest a gross and arbitrary disregard of the entire spirit and intent of the interstate commerce act.

A law passed in the interests of and to promote justness and reasonableness may not be used to perpetrate injustice and unreasonableness any more than the statute of frauds can be used as an instrument to perpetrate fraud.

172 For this reason there does inhere in the Federal courts of equity power to review rates made by the commission above and beyond constitutional questions and questions as to the technical limits of delegated power, and to inquire whether or not the delegated power has been exercised in a just and reasonable manner, and within the true spirit and intent of the law, and to relieve from such orders as, though not technically confiscatory or discriminatory and not technically beyond the terms of the statute, are nevertheless so inherently inconsistent, unjust, unreasonable, and violative of common right as to be on their face unjust and unreasonable orders in the common sense of the terms.

In the case of The Interstate Commerce Commission v. Illinois Central R. R. Co., decided by the Supreme Court January 10, 1910, Mr. Justice White uses the following language: "Beyond controversy, in determining whether an order of the commission shall be suspended or set aside, we must consider, (a) all relevant questions of constitutional power and right; (b) all pertinent questions as to whether the administrative order is within the scope of the delegated authority under which it purports to have been made; and (c) a proposition which we state independently, although in its essence it may be contained in the previous one, viz, whether even although the order be in form within the delegated power, nevertheless it must be treated as not embraced therein, because the exertion of authority which is questioned has been manifested in such an unreasonable manner as to cause it in truth to be within the elementary rule that the substance and not the shadow determines the validity of the exercise of the power."

In Louisville & Nashville R. R. Co. v. Interstate Commerce Commission, decided April 9, 1910, by the Circuit Court for the

173 Western District of Kentucky, the court used this language: "If the order were so unreasonable or so manifestly unjust as to induce the belief that the fundamental principles of rational justice had been disregarded * * * it would be our duty to prevent such a consequence by awarding an injunction." In Peavey & Company v. Union Pacific Railway Company, recently decided by the Judges of the Eighth Circuit, the court said: "The Interstate Commerce Commission is an administrative tribunal and the wisdom and

expediency of the lawful exercise of the discretion delegated to it under the Constitution and the statutes is not reviewable by the courts. But the power is vested in and the duty is imposed upon the circuit courts to relieve from orders of the commission which * * * though in form within its delegated power evidence so unreasonable an exercise of it that they are in substance beyond it." In Stickney v. Interstate Commerce Commission, 164 Fed. 638, 644, 645, the court said: "The finding of facts on controverted and conflicting evidence by such bodies, when not brought about by fraud or mistake, is generally conclusive and ought not to be disturbed by the courts; but when facts found, conceded or established without dispute admit of but one legal conclusion and a different and erroneous one is reached by reason of a misconception and misapplication of law by such bodies, their action is subject to review and may and ought to be avoided by the courts."

These decisions do not mean that the courts may substitute their own opinion for that of the commission. They do mean, however, that whenever an order is so inherently inconsistent with and violative of the fundamental principles of rational justice as to clearly evince an arbitrary disregard for and perversion of the true spirit and intent of the interstate commerce act, it is an unlawful and unauthorized order, and one from which the courts have power and are bound to grant relief.

174 Applying the principles arrived at in the foregoing discussion to the facts exhibited in the record, I am compelled to the following conclusions:

There is no evidence in the record from which it clearly and persuasively appears that the rates established by the orders here in controversy are confiscations.

It does, however, appear that they are very low rates, and unusually favorable to the shippers and to the public.

In restoring the superseded rates to the Pembina–Port Arthur line, including the old 50-cent rate over the Union Pacific system to Omaha, the commission has necessarily found and determined that the 50-cent rate to Omaha and Missouri River points was and is a just and reasonable rate, and the court has a right to take them at their own opinion on this point.

If it be true that a 50-cent rate to Omaha is a just and reasonable rate (and the commission has so found) then it must inevitably follow that the rate of 45 cents to St. Paul and 55 cents to Chicago are unjust and unreasonable rates.

The difficulties and expenses of transportation over the Union Pacific line and the northern lines are fairly equal. The route over the northern lines to St. Paul is longer. But St. Paul and Omaha have always been considered by the commission and by rate-making experts as on a parity as bases of rates.

The rate of 10 cents to Chicago from St. Paul is conceded to be an unusually low rate, and is conceded by the commission to be just and reasonable.

If, then, 50 cents to Omaha is just and reasonable, 45 cents to St. Paul must be grossly unjust and unreasonable, strongly tending toward confiscation of property of the northern lines, strongly tending toward unjust discrimination against the northern lines and in favor of the Union Pacific, and strongly tending to unduly
175 prefer the territory served by the northern lines over that served by the Union Pacific, and in all these features to be a gross, arbitrary, and palpable disregard and perversion, not only of the spirit and intent of the law, but of the very terms of the law itself wherein it forbids unjust discrimination against carriers and localities and undue preferances to carriers and localities.

It will be said that the 45-cent rate, though confessedly less than that which is just and reasonable as found by the commission, is nevertheless not sufficiently so in its relation to the whole body of net returns, to result in confiscation. This is probably true. There is no evidence to show whether it is or not. But on the commission's own basis it is 10 per cent less than what the commission themselves have determined to be just and reasonable, and in itself is so inconsistent with and violative of the fundamental principles of rational justice, so incompatible with the commission's own expressed notions of what is just and reasonable as to manifest and evince upon its face an arbitrary violation of the spirit and intent of the law, and an arbitrary disregard of the fundamental principles of the interstate commerce act out of which their powers grow and in accordance with which their powers must be exercised.

These orders further appear to be inconsistent in dealing with the differential between Omaha and Chicago and St. Paul and Chicago. Omaha and St. Paul are on a parity as bases of rates to Chicago, and yet the Union Pacific is allowed a 5-cents per one hundred pounds differential to Chicago, while the northern lines are allowed 10 cents. And the 10-cent rate from St. Paul to Chicago is and always must be an exceedingly low rate because of water competition. It seems absurdly inconsistent to compel the Union Pacific road to make the haul from Omaha to Chicago for 5 cents and
176 allow the northern lines 10 cents for the same haul, and further illustrates the inconsistency of the commission's order.

In determining the issues before it the defendant ordered the rates from the coast territory to the so-called Pembina-Port Arthur line, and destinations west thereof, restored to the basis in existence immediately prior to November 1, 1907. To the territory east of that line it permitted an advance not to exceed 5 cents per hundred pounds over the rates in effect immediately previous to November 1, 1907. The defendant in this way presented the matter in a double aspect, and in the consideration of the questions involved in these cases, the master has followed the same course and will state his conclusions in that order, that is to say:

(1) Does the evidence justify or require that the orders of the defendant, restoring the rates in existence prior to November 1, 1907, on and west of the so-called Pembina-Port Arthur line shall be en-

joined; that is to say, does the evidence, giving to it all of the weight to which it is fairly entitled, overthrow the presumption that the orders in that regard are valid or, applying the test indicated by the recent decision of the Supreme Court of the United States in Interstate Commerce Commission v. Illinois Central Railroad Company, et al., — U. S. —, does the evidence establish that "the assertion of authority which is questioned has been manifested in such an unreasonable manner as to cause it in truth to be within the elementary rule that the substance and not the shadow determines the validity of the exercise of the power"?

(2) Turning to that portion of the orders setting aside the rates filed by the carriers and effective on November 1, 1907, to points east of the so-called Pembina-Port Arthur line, and in lieu thereof, permitting an advance over the preexisting rates not to exceed
177 5 cents per hundred pounds, and applying the same tests above referred to, are the results such as to lead to the necessary conclusion that the injunctive order of this court should issue?

Dealing with these questions in the order stated, it appears that in considering the conclusion reached by the defendant, the rate from the coast district to Omaha may be taken as illustrative.

The short-line distance from Portland to Omaha is stated by the commission in its decision in the so-called Oregon case (No. 1327) to be 1,799 miles. From the exhibits offered before the commission it appears that this is substantially correct, and the the 50-cent rate restored by the orders of the commission results in revenue of 5.56 mills per ton-mile. To Kansas City, another Missouri River point to which the same 50-cent rate applies, the distance appears to be 2,030 miles, with a resulting ton-mile earning of 4.92 mills. Using these points as fairly illustrative of the character of the coast rates to the so-called Missouri River territory, as they fairly may be used, it is difficult to escape the conclusion, it it were the function of this court to fix a just and reasonable rate upon this traffic for the service rendered to points such as these, that rates of this character are unduly low. That is not the duty of this court, however, and the action of the commission in ordering these and all other rates to this so-called Pembina line restored, and thereby approving them as just and reasonable, is to be tested by the rules herein above referred to.

The revenue per ton-mile thus returned is much below the average revenue per ton-mile derived from all commercial business on the lines of either of the complainants. It is below the average revenue per ton-mile from lumber on the Union Pacific system for any of the recent years. It is substantially below average earnings
178 per ton-mile on numerous other commodities, many of which may be denominated low grade in their character, moved over the Union Pacific system from Portland and coast points to Omaha and other eastern terminals. In the opinion of witnesses produced by the carriers, including the freight traffic manager of the Union Pacific Railroad Company, this 50-cent rate is unreasonably low.

From what has been said above, it can not be denied that there was substantial evidence that the rates in question to Missouri River points are at least upon a low basis upon the traffic in question in these cases, but it is the finding and conclusion of the master that the evidence upon this branch of the cases is not so clear and conclusive under the rules above referred to as to justify a recommendation that an injunction be issued against that portion of these orders.

The same finding and conclusion is reached regarding the rates, generally, to destinations on and west of the so-called Pembina-Port Arthur line. The master, therefore, recommends that the prayer for injunction against the orders of the defendant, disapproving the rates filed by the complainants to destinations on and west of the Pembina-Port Arthur line and requiring the restoration of the rates to these destinations in effect immediately prior to November 1, 1907, be denied.

In reaching its conclusion that the rates in question to Omaha and other points on the Pembina-Port Arthur line should be restored to the basis in effect just prior to November 1, 1907, it is to be presumed that the defendant acted under the authority delegated to it by the act to regulate commerce and the amendments thereto; it is to be presumed that thus acting under the delegated authority the defendant approved and established the preexisting rates as just and reasonable for the service involved. In fact, an examination of the opinions and orders of the defendant in these cases clearly shows that such was the judgment of the defendant. As already seen,
179 the defendant is without power to establish rates upon any other basis, and it is, therefore, the irresistible conclusion that for the distance and under the conditions involved, the preexisting scale of rates to this line was in the opinion of the defendant just and reasonable. The rate from Portland to Omaha seems to have been used by the defendant in reaching its conclusions as fairly illustrative and we are, therefore, furnished in these cases, by the defendant itself, with a valuable measure for determining whether its orders in disturbing rates here involved, but to points east of the Pembina-Port Arthur line, should also be supported. If we find that for equivalent or greater distances and under substantially similar conditions a similar rate was condemned and a lesser rate required, we may properly inquire for the reasons for this seeming inconsistency, and unless satisfactory reasons appear, the final inquiry is necessarily presented whether a case such as that pointed out in the decision of the Supreme Court in Interstate Commerce Commission v. Illinois Central Railroad Company et al., supra, is not presented. Stated differently, the inquiry is whether the act of the defendant, without apparent reasons, in disapproving the identical rate of 50 cents per hundred pounds for substantially the same or a greater distance, and requiring a lower rate for apparently the same character of service, is not the exercise of authority manifested in such an unreasonable manner as to be beyond the power delegated to the defendant.

This inquiry necessarily follows for the reason that, having prescribed a rate of 50 cents per hundred pounds as the measure of a just

and reasonable rate for a given distance, it can not be true in reason that for the same or a greater distance, under similar circumstances of transportation, a substantially lower rate is at the same time just and reasonable.

180 In considering this branch of the case, it is to be understood that the distance from Portland to Omaha is but typical and illustrative, and that the same rate applies from many other coast points of production and to other Missouri River points of destination, resulting in a variety of combinations of distances varying within considerable limits. So, also, in considering the rates to St. Paul and Minneapolis, over the lines of the Great Northern and Northern Pacific systems, the same conditions are true. The coast rates apply to St. Paul, Minneapolis, and Duluth from a variety of shipping points in the coast territory reaching to the international boundary, so that as to the rates over these lines a variety of combinations of distance may be found. From Tacoma, Washington, to Minneapolis, via the Northern Pacific lines, is substantially 1,896 miles; from Portland to St. Paul, via this line, it is 2,052 miles, and as an illustration of longer hauls to St. Paul, via this line, the distance from Astoria to St. Paul is 2,072 miles. Substantially similar results are obtained upon the Great Northern lines.

It is therefore not unfair to adopt an average of conditions, and, indeed, this seems to have been the basis upon which the defendant proceeded.

It will be recalled that prior to the reduction in 1893 by the Great Northern the basis of rates on lumber and forest products to St. Paul and to Omaha from the Pacific northwest was the same. The rate to each point was then 55 cents per hundred pounds. The reasons which led to the reduction in the rate to St. Paul at that time have already been considered, and the disturbance of the equal basis of rates to these points seems to have been the result of competitive and marked conditions of a special or exceptional character. It is understood that upon many other items of traffic rates between

181 Omaha and St. Paul on the one hand, and the coast territory on the other, have always been the same, and, indeed, in the recent decision by the defendant of the case of the City of Spokane et al. v. Northern Pacific Railway Company et al., decided June 7, 1910, 19 I. C. C., 162, rates on classes and commodities, generally, to Spokane territory are fixed upon the same basis from St. Paul as from Omaha. This decision involves westbound traffic, it is true, but in it the defendant used the following language, which seems to support the conclusion that in the absence of exceptional circumstances, rates applying between St. Paul and Omaha on the one hand, and points in the coast territory, as well as the Spokane territory, on the other, should normally be upon an equal basis.

Thus the commission said in the case above cited: "There is no condition of construction or operation, or financial result, which would justify the Union Pacific lines in maintaining a higher rate for 1,500 miles from Omaha west toward Portland, than is maintained

by the Northern Pacific and Great Northern for a corresponding distance west from St. Paul toward Seattle."

While, as stated, it is true that this observation relates to westbound traffic, and perhaps is not conclusive in considering this eastbound traffic, it nevertheless is persuasive, and in the absence of anything in the record before the master indicating differences in conditions in the eastbound traffic to Omaha, as compared with the eastbound traffic to St. Paul, it may be regarded in connection with the other considerations referred to as an important matter for consideration.

The fixing by the defendant, therefore, of rates upon an equal basis between the points under discussion and the equal relation of rates of long standing referred to in the oral argument between
182 these points seems to lead to the conclusion that the transportation conditions applying between these points are substantially alike.

Before the commission in these proceedings, the complaining shippers urged that there should be equal rates upon this lumber traffic from the coast to St. Paul and to Omaha. These shippers urged that the 40-cent rate in effect to St. Paul and Minneapolis prior to November 1, 1907, should be applied to Omaha and the Missouri River territory generally, and it is fairly to be inferred that this position was taken in accordance with a conviction that conditions commercial, as well as otherwise, were so alike as to require equal rates.

From the deliberate conclusion, however, reached by the defendant that the 50-cent rate was just and reasonable upon this traffic to Omaha it is plain that the 40-cent rate asked by the shippers could not be.

Is it, therefore, possible in view of these various considerations to support the order of the defendant requiring the Northern Pacific and the Great Northern lines to withdraw the 50-cent rate made applicable by the tariffs of November 1, 1907, to St. Paul and common territory and to install instead a rate of 45 cents?

As its reasons for permitting an advance east of the Pembina-Port Arthur line, the defendant said in the so-called Washington case (No. 1329): "To certain points farther east, involving longer hauls, it is believed that there was justification for some advance, in view of the less revenue per ton mile accruing to the carriers from this traffic."

The controlling reason, therefore, that appeared to move the defendant to permit an advance of not to exceed 5 cents per hundred pounds was the longer haul involved to points east of the Pem-
183 bina-Port Arthur line and the consequent lesser revenue per ton per mile. St. Paul, Minneapolis, and Duluth are east of the Pembina-Port Arthur line and, as already shown, traffic to these points from the coast territories probably involves on the average substantially longer hauls than to Omaha; certainly traffic to the northern destinations referred to involves no lesser haul than to Omaha, and it may safely be said that the average distance between points which, under the commission's orders, take the 45-cent rate,

is generally greater than the average distance between points where under the commission's orders the 50-cent rate applies.

The revenue per ton mile, however, according to the Great Northern and Northern Pacific lines, even under the 50-cent rate published by them in their tariffs of November 1, 1907, is in many important instances measurably less than the revenue per ton mile accruing upon traffic to Omaha under the 50-cent rate approved to that point. Under the 40-cent rate the revenue per ton mile on traffic from Portland to St. Paul as shown by the record was 3.90 mills and under the 50-cent rate, contained in the tariffs of November 1, 1907, it would be 4.87 mills. From Tacoma to Minneapolis, as shown by the evidence, under the 40-cent rate the revenue per ton mile was 3.98 mills, and under the 50-cent rate would be 5.27 mills. Under the 50-cent rate approved from Portland to Omaha the revenue per ton mile is 5.56 mills. These figures may be taken as fairly representative of conditions and seem to clearly demonstrate that the revenue per ton mile earned by the carriers transporting this traffic to St. Paul and common points even under the 50-cent rate would be substantially less than the revenue per ton mile accruing to carriers in the traffic to Omaha, and, therefore, if the reason given by the commission for permitting an advance in rates to points east of the Pembina-Port Arthur line seem to it to be of sufficient weight to authorize their
184 action in that regard, it is impossible to understand why the same reasons do not compel a recognition of the 50-cent rate to St. Paul as just and reasonable.

Notwithstanding the apparently conclusive character of the result thus indicated by applying the measure thus furnished by the defendant for determining a just and reasonable rate for the distance and under the conditions in question it may be said to still be the duty of the court upon the whole record before it to determine whether the 50-cent rate in and of itself is in any wise unjust or unreasonable to be applied to this traffic to St. Paul and points taking the same rate.

The complainants sought to prove the issue in this regard by various methods. They called numerous witnesses of wide experience in railroad traffic affairs and these witnesses expressing their opinion and adding reasons therefor were agreed not only that the 40-cent rate previously in effect to St. Paul was unreasonably low, but that the entire body of rates upon this traffic to eastern points of delivery was below what they properly should be. Witnesses for the railroad companies offered in addition numerous exhibits comparing the preexisting rates, as well as the proposed rates and earnings therefrom, with lumber rates from other sections of the country and with lumber rates applying upon their own lines. There were also numerous comparisons of the rates and earnings on other commodities with lumber based both upon earnings per ton mile and upon earnings per car. In addition to these methods of dealing with the questions involved, witnesses of experience sought to further support the position of the railroads by the making of approximate computations

of the cost of handling this lumber traffic. Regarding these computations, however, it may be said that the results while instructive as showing approximate or average results are not sufficiently close
185 to the mark to be conclusive. The evidence relating to the expense resulting from the haul of empty cars west bound seems clearly to indicate that there is a large element of expense involved in this traffic on that account on the Northern Pacific and Great Northern lines at least. And it may be said that the opinions of the witnesses upon this branch of the proof offered tend strongly to support the judgment of the same and other witnesses that the rates in effect prior to November 1, 1907, in so far as they covered the longer hauls, produced less revenue in comparison with the probable cost involved in the traffic than reasonably might be demanded.

A careful consideration of all of the testimony and exhibits offered before the master in behalf of the defendant upon the question of the character of these rates has failed to disclose any substantial proof in opposition to that offered on this subject by the complainants. The effect which, under the authorities must be given to the conclusions of the defendant, has led to the result as above indicated that this record does not present evidence so clear and convincing as to justify in the opinion of the master an injunction against the rates approved by the commission to points on and west of the Pembina-Port Arthur line, but weighing the proof applicable to the rates applying to points east of that line in connection with the conclusions reached by the defendant regarding the rates to the line and in the light of the reasons advanced by it for those conclusions, it is the finding and opinion of the master upon the entire record that the orders of the defendant adjudging the rates filed by the carriers to points east of the Pembina-Port Arthur line on November 1, 1907, to be unjust and unreasonable can not be supported and that, indulging every reasonable inference from the proof and the necessary inferences from the findings of the defendant
186 itself, the orders in so far as they displace the rates contained in the tariffs of November 1, 1907, to points east of the Pembina-Port Arthur line and in lieu thereof permit only the advance of not to exceed 5 cents per hundred pounds over the preexisting rate, should be set aside and enjoined.

By the effect of the orders of the defendant finding the rates to points east of the Pembina-Port Arthur line to be unjust and unreasonable the rates contained in the tariffs of November 1, 1907, not only to St. Paul and common points, but also rates to destinations further east, were disturbed. The tariffs of November 1, 1907, fixed a rate upon lumber from the coast territory to Chicago of 60 cents. This rate was constructed by adding to the rate of 50 cents, fixed in said tariffs, to St. Paul, a rate of 10 cents per hundred pounds to cover the transportation from that point to Chicago. There is nothing in the record nor in the decisions or orders of the defendant indicating that this rate of 10 cents was complained of, and it appears from the manner in which the defendant disposed of the cases that this

rate was approved as a factor in determining the rate to Chicago. This necessarily follows because, complying with the orders of the defendant and using the rate fixed by it to St. Paul of 45 cents, the carriers filed and published a rate of 55 cents to Chicago.

A large amount of testimony appears in the record, much of which was before the defendant and some of which was added in the hearings before the master, relating to the circumstances and conditions under which the rates on lumber between St. Paul and similar points and Chicago and points on the Mississippi River, including St. Louis, have been in the past made and controlled. It is said, and seems amply supported by the proof, and that the rate of 10 cents from St. Paul to Chicago is made in competition with carriers of lumber
187 on the great lakes from Duluth to Chicago, and to some extent, so far as points on the Mississippi River are concerned, with carriers transporting lumber upon the Mississippi River. In the past it is probable that the lumber traffic on the Mississippi River had a larger effect upon the rates of the railroad lines competing therewith than at the present day, but from the history of the development of the lumber industry in the north is plain that the rail rates from northern points such as St. Paul and Duluth to Chicago and Mississippi Valley points to and including St. Louis, have always been and are to-day affected and held to a low basis by the various forms of water competition referred to. The distance from St. Paul to Chicago by railroad is about 410 miles; the earnings per ton mile on traffic under the rate of 10 cents in effect are approximately 5 mills. An examination of the various tables of rates contained in this record applied on numerous railroads in various parts of the country indicates that for a distance of this kind this rate is upon a reasonably low basis. It is impossible to see wherein a lower rate than this could be justified or at least required for the distance in question, and, therefore, having reached the conclusion that the orders of the defendant disapproving the rate of 50 cents published to apply on November 1, 1907, to St. Paul and common points can not be supported it must necessarily follow that the orders of the defendant in disapproving the rate filed and published to apply on November 1, 1907, of 60 cents to Chicao must also be disapproved and should be for the same reasons enjoined. This traffic, however, is moved to Chicago and other points east and south thereof via Omaha and other points on the Missouri River in competition with the lines operating through St. Paul and Minneapolis. The 60-cent rate established in the tariffs on November 1, 1907, to Chicago applied via lines
188 leading through Omaha and other Missouri River points. The distance from Omaha to Chicago is approximately 500 miles. It appears from the record that the carriers between Omaha and the Missouri River and Chicago on this traffic received 10 cents per hundred pounds out of the total rate to Chicago, although at times in the past in order to secure this amount the carriers west of the Missouri River have been required to allow all or a portion of this rate out of the earnings accruing to them from the rate to Omaha.

In the tariffs of November 1, 1907, the effort was made to advance the rate to Omaha to 55 cents whereby it appears that out of the rate proposed of 60 cents to Chicago the carriers west of Omaha would not have been compelled to have allowed the entire 10 cents out of their earnings accruing from the rate to Omaha. The question of divisions between carriers is not involved in the issues in these cases, and all that the court can consider in this regard is the question whether there is anything in the record to indicate that the addition of 10 cents to the rate of 50 cents, approved by the commission to Omaha, would be unjust or unreasonable for the transportation of this traffic from Omaha to Chicago. Considering all of the facts relating to the character of the 10-cent rate above referred to in its application between St. Paul and Chicago for the distance involved and under the condition disclosed in the record, it can not be successfully claimed that for the greater distance from Omaha to Chicago the same rate is either unjust or unreasonable. Regardless of the questions involved between the carriers in meeting competitive conditions in the rate to Chicago via Omaha the question is presented whether the orders of the defendant in disapproving the rate of 60 cents fixed by the tariffs of November 1, 1907, to Chicago can be sustained, and for the various reasons hereinbefore referred to it is plain that this
189 rate, whether applied via St. Paul or via Omaha, neither was nor is unjust or unreasonable. If 50 cents was, as determined by the commission, just and reasonable to Omaha, it is impossible to understand wherein 60 cents was unjust or unreasonable for the added distance of approximately 500 miles to Chicago.

There is a recognized relation between these rates to the various points of destination east of St. Paul and Omaha, and Chicago has been taken hereinabove as typical only of conditions generally affecting rates to all such destinations; in fact in the orders of the defendant permitting an advance not to exceed 5 cents per hundred pounds east of the Pembina-Port Arthur line the commission proceeded on the theory that the relation referred to when observed would produce a relation of rates that would be just and fair and for this reason it is unnecessary for the court in determining the issues presented by these cases to deal with the orders of the defendant in their effect upon rates to points east of the Pembina-Port Arthur line other than as above indicated.

In conclusion, therefore, the master is of the opinion, and so finds, that the orders of the defendant adjudging the rates contained in the tariffs filed by the complainants and effective November 1, 1907, to points east of the so-called Pembina-Port Arthur line to be unjust and unreasonable can not be approved; that the orders of the defendant requiring the rates to points east of said line to be withdrawn and in lieu thereof restricting the complainants to an advance of not to exceed 5 cents per hundred pounds to said points for the same reasons can not be supported, and the master recommends that an injunction be issued against the orders of the defendant to the extent aforesaid, and that said orders, in so far as they adjudged the

rates contained in the tariff of November 1, 1907, in question, to points east of the so-called Pembina-Port Arthur line to be
190 unjust or unreasonable and prescribed rates lower than those contained in said tariffs to said points in lieu thereof be set aside and annulled.

By the order in the so-called Potlatch case (No. 1346), which is one of the orders sought to be enjoined in these proceedings, the defendant fixed rates from points in eastern Washington, eastern Oregon, and Montana to points east of the Pembina-Port Arthur line, which were less by fixed differentials than the rate to the same territory from points on the Pacific coast. The justness and reasonableness of these differentials are not attacked in these cases, but it follows from what has been said above that as the order of the commission fixing base rates from Pacific coast points to territory east of the Pembina-Port Arthur line must be enjoined in so far as it forbids the collection of the rates fixed to that territory by the tariffs effective November 1, 1907, the order of the commission in the Potlatch case must likewise be enjoined to the extent that by the application of the differentials fixed by that order the rates from eastern Washington, eastern Oregon, and Montana are reduced below those fixed from the same territory to points east of the Pembina-Port Arthur line by the tariffs effective November 1, 1907.

In the submission of testimony and in the arguments before the master, the questions presented by these cases have been considered principally with regard to the rate on fir lumber. That rate has been treated by both complainants and defendant as typical, and it has been so accepted and treated by the master in the foregoing findings. The relation between that rate and the rates on other lumber, shingles, and other forest products to points east of the Pembina-Port Arthur line was the same previous to November 1, 1907, and in the tariffs made effective on that date; and the orders of the
191 commission left that relation unchanged. No question is made by either party as to the fairness of this relation. From the findings that the defendant's orders condemning the rates to November 1, 1907, on fir lumber to points east of the Pembina-Port Arthur line should be enjoined, it follows that those orders should be enjoined in so far as they condemn those rates and prescribe lower rates on other lumber, shingles, and other forest products to points east of that line, and it is so recommended.

In accordance with the foregoing conclusions the master recommends the entry of decrees in each of the said cases in the form hereto attached.

FREDERICK N. DICKSON,
Special Master.

ST. PAUL, MINN., *Aug. 27, 1910.*

(Endorsed:) Filed August 27th, 1910. Henry D. Lang, Clerk.

192 United States Circuit Court for the District of Minnesota. Third division.

GREAT NORTHERN RAILWAY COMPANY, NORTHERN Pacific Railway Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad and Navigation Company, and Southern Pacific Company, *vs.* INTERSTATE COMMERCE COMMISSION.	Equity No. 885

This cause came on to be heard at this term and was argued by counsel, and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows:

That the order of the defendant in that proceeding brought before it entitled Potlatch Lumber Company et al. v. Northern Pacific Railway Company et al., being I. C. C. No. 1348, dated June 2, 1908, as amended July 27, 1908; and the order of the defendant in that proceeding brought before it entitled Pacific Coast Lumber Manufacturers' Association v. Northern Pacific Railway Company et al., being I. C. C. No. 1054, dated June 1, 1908, as amended June 27, 1908, and as further amended September 1, 1908; and the order of the defendant in that proceeding brought before it entitled Western Oregon Lumber Manufacturers' Association et al. v. Southern Pacific Company et al., being I. C. C. No. 1331, dated June 1, 1908, and the order of the defendant in that proceeding brought before it entitled Oregon and Washington Lumber Manufacturers' Association et al. v. Union Pacific Railroad Company et al., being I. C. C. No. 1327, dated June 2, 1908, as amended July 27, 1908, and as further amended September 1, 1908, and as further amended September 25, 1908, and the order of the defendant in those two proceedings brought before it entitled Pacific Coast Lumber Manufacturers' Association et al. v. Northern Pacific Railway Company et al., being I. C. C. No. 1329, and Southwest Washington Lumber Manufacturers' Association v. Northern Pacific Railway Company et al., being I. C. C. No. 1335, dated June 2, 1908, as amended July 27, 1908, and as further amended September 1, 1908, and as further amended September 25, 1908, in so far as said orders or any of

193 them require the complainants herein to cease and desist from enforcing the rates prescribed by complainant's tariff effective November 1, 1907, and to prescribe lower rates than those prescribed by said tariff from points in Washington, Oregon, Idaho, and Montana to points east of a line drawn from Pembina, North Dakota, southward through Grand Forks, North Dakota; Moorhead and Breckenridge, Minnesota; Sioux City and Council Bluffs, Iowa; St. Joseph and Kansas City, Missouri, and thence to Port Arthur, Texas, along the Kansas City Southern Railway be, and each of them hereby

is, set aside and annulled, and the defendant and its members, their agents, servants, and representatives, are hereby perpetually enjoined and restrained from enforcing any of said orders in so far as they affect rates to points east of said line.

WALTER H. SANBORN,
WILLIS VAN DEVANTER,
WILLIAM C. HOOK,
United States Circuit Judges.

194 Thereafter and on the same day the following order noting the filing of the master's report was entered in said cause, to wit:

195 United States Circuit Court, District of Minnesota, Third Division. Chancery Rule and Order Book.

GREAT NORTHERN RY. CO. ET AL.
vs.
INTERSTATE COMMERCE COMMISSION. } No. 885. Equity.

Aug. 27th, 1910.

And now comes Frederick N. Dickson, the duly appointed special master in chancery in the above-entitled cause, and filed his report in the clerk's office of said court, under an order appointing him special master in chancery, which said filing is hereby entered and noted.

(Entered C. R. "C.," page 208.)

Thereafter and on the same day the following report of rulings upon exceptions and complainants' and defendant's exceptions was filed in said cause, to wit:

196 In the Circuit Court of the United States. For the District of Minnesota, Third Division.

No. 883.

UNION PACIFIC RAILROAD COMPANY, OREGON SHORT LINE RAILROAD Company, Oregon Railroad & Navigation Company, Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Chicago, Burlington & Quincy Railroad Company, and Oregon California Railroad Company, complainants,

vs.

INTERSTATE COMMERCE COMMISSION, DEFENDANT.

No. 884.

NORTHERN PACIFIC RAILWAY COMPANY, GREAT NORTHERN RAILWAY Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad & Navigation Company, complainants,

vs.

INTERSTATE COMMERCE COMMISSION, DEFENDANT.

No. 885.

GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC RAILWAY Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad & Navigation Company, and Southern Pacific Company, complainants,

vs.

INTERSTATE COMMERCE COMMISSION, DEFENDANT.

By order of the court above named, entered therein on the
197 13th day of February, 1909, the above-entitled causes were referred to the undersigned, as special master in chancery, to take and report to said court the evidence, to examine the same, to make necessary computations, to find and state the facts in said causes, and to report advisory conclusions of law and recommend a proper form of decree therein.

Pursuant to said order, the testimony in said causes was taken and has been returned and filed in said court. And after hearing arguments of counsel, and on consideration, the undersigned, as such special master, did, on the 22nd day of July, 1910, pursuant to the terms of said order, exhibit to counsel his preliminary report and delivered to them copies thereof.

Thereupon, upon stipulation of the parties, it was ordered that said respective parties file with the undersigned on or before the 19th day of August, 1910, their objections and exceptions to said preliminary report, if any they had; and upon the 19th day of August, 1910, the defendant in said causes filed with the undersigned exceptions, a true copy of which is hereto attached and marked Exhibit "A," and the complainants filed with the undersigned exceptions, a true copy of which is hereto attached and marked Exhibit "B."

After hearing arguments of counsel and upon consideration, the master rules as follows upon said exceptions:

Defendant's exception No. 1 is overruled for the reason that the matter therein excepted to is fully covered in the specific finding of fact No. IV, and the suggested finding of fact is partial and unfair.

Defendant's exception No. 2 is overruled. The difference between the finding and the suggested finding is one of degree, and in the master's judgment the finding excepted to is amply sustained by the evidence.

Defendant's exception No. 3 is overruled. The suggested
198 finding that at the time of the installation of the 40-cent rate it was not known whether there would be an empty east-bound car movement is not sustained by the evidence, and, under the circumstances existing at that time, is obviously untrue.

Defendant's exception No. 4 is allowed and the master's report modified accordingly.

Defendant's exception No. 5 is allowed and the master's report modified accordingly.

Defendant's exception No. 6 is overruled. The finding objected to is sustained by the evidence and the suggested finding is amply covered in other portions of the report.

Defendant's exception No. 7 is overruled, for the reason that it is not sustained by the evidence.

Defendant's exception No. 8 is overruled. The finding objected to is, in the master's judgment, amply sustained by the evidence and the suggested finding that there is no satisfactory explanation of the sharp and sudden decrease in the percentage of eastbound loaded car mileage over westbound car mileage in the year ending June 1, 1907, is not true. In the master's judgment the explanation was ample.

Upon argument, the defendant withdrew exception No. 9, objecting to the recital of the testimony of R. I. Farrington. The finding suggested in exception No. 9 is refused as not being sustained by the evidence.

Defendant's exception No. 10 is refused as not being sustained by the evidence.

Upon argument in reference to defendant's exceptions Nos. 11 and 12 it was agreed that the requirements of these exceptions would be met by inserting the percentages of dividends paid in recent years by the complainants' roads, and the master's report has been modified accordingly.

Defendant's exception No. 13 is overruled. To say that the 50-cent rate involved was not established by the order of the commis-
199 sion because it had theretofore been in effect, is a quibble. Upon the consideration of the case it was the commission's duty to prescribe the maximum rate for the future, and they did prescribe this rate and thereby established it.

Defendant's exception No. 14 is overruled. The finding objected to is amply sustained by the evidence.

Defendant's exceptions Nos. 15 to 24 inclusive are each and all of them exceptions to various findings of fact in the master's report, and are objected to on the ground that they are not sustained by the evidence or are immaterial. Each and all of these exceptions are overruled by the master for the reason that in his judgment they are all amply sustained by the evidence and are material and relevant.

Defendant's requested finding of fact No. 1 is refused on the ground that it is not sustained by the evidence.

Defendant's second requested finding of fact is refused on the ground that it is not sustained by the evidence.

Defendant's third requested finding of fact is refused. The application of a 45-cent rate referred to in the second paragraph is not as stated in said paragraph and the requested finding is not sustained by the evidence.

The defendant's fourth requested finding of fact is refused on the ground that it is immaterial and does not support the conclusion therein arrived at.

Defendant's fifth requested finding of fact is refused on the ground that it is not sustained by the evidence. While the master has found that the general net returns of the carriers have been fairly satisfactory, and has also found that there is no evidence in the case tending to show that the rates charged upon lumber were confiscatory, he has also found that the rates charged upon lumber were very low rates. The finding herein amounts to an affirmative finding that the carriers have been receiving adequate compensation for their
200 lumber traffic. In the master's judgment the evidence does not sustain such finding.

Defendant's sixth requested finding of fact is refused, because n sustained by the evidence.

Defendant's seventh requested finding of act is refused. While some of the statements therein contained are true, the finding, as a whole, is immaterial.

Defendant's eighth requested finding of fact is refused as immaterial and already covered by the findings of fact. The master has expressly found that there is no evidence showing the relation and effect of the lumber rate upon the general body of net returns.

Defendant has filed 37 specific exceptions to the master's conclusions of law, Numbered 1 to 37 inclusive, in which defendant takes exception to the conclusions which the master has arrived at in his report. All these various conclusions assailed by these exceptions are sufficiently explained in the master's report and said exceptions are each and all of them overruled for the reason stated in the report.

Exception No. 35 of the conclusions of law raises the question whether or not the court has the power to modify the commission's orders in the manner attempted in the decrees recommended herein, it being the contention of the defendant that the court has no power to do anything further than either to enjoin the commission's orders in toto, or sustain them in toto.

This exception is specifically overruled. The commission dealt with the rates in question in a two-fold manner, dividing their application by the so-called Pembina-Port Arthur line and applying a different rule to the territory east and west of said line. If this is a justifiable basis of division, the court has a right to deal with the matter on such basis.

Referring to complaintnt's exceptions, exception 1 is par-
201 tially allowed, and the master's report has been modified to the extent of limiting the period covered by said finding to a period beginning in the year 1901. Aside from this modification the exception is overruled.

Exception II is overruled. The master adheres to his original conclusions in this respect and thinks that the reasons for his position are sufficiently explained in his report.

Exception III is also overruled for the same reason.

Exception IV is also overruled for the same reason.

Exception V is also overruled for the same reason.

Exception VI is also overruled for the same reason.

Herewith the master files his final report of said causes, containing the modifications allowed hereinbefore.

Dated at St. Paul, Minn., this 27th day of August, 1910.

FREDERICK N. DICKSON,
Special Master in Chancery.

202 Exhibit A. In the Circuit Court of the United States, for the District of Minnesota, Third Division.

No. 883.

UNION PACIFIC RAILROAD COMPANY, OREGON SHORT LINE RAILROAD Company, Oregon Railroad & Navigation Company, Southern Pacific Company, Northern Pacific Railway Company, Great Northern Railway Company, Chicago, Burlington & Quincy Railroad Company, and Oregon, California Railroad Company, complainants,

v.

INTERSTATE COMMERCE COMMISSION, DEFENDANT.

No. 884.

NORTHERN PACIFIC RAILWAY COMPANY, GREAT NORTHERN RAILWAY Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad & Navigation Company, complainants,

vs.

INTERSTATE COMMERCE COMMISSION, DEFENDANT.

No. 885.

GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC RAILWAY Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad & Navigation Company, and Southern Pacific Company, complainants,

vs.

INTERSTATE COMMERCE COMMISSION, DEFENDANT.

Objections and exceptions taken by the above named defendant to the report of the special master herein, to whom these cases were referred to take proofs and report thereon.

CHARLES C. HOUPT,
United States Attorney.
LUTHER M. WALTER,
Special Assistant United States Atty.
Solicitors for Defendant.

203 Comes now the Interstate Commerce Commission, defendant in the above named cases, by its solicitors, and objects to the report of Hon. Frederick M. Dickson, special master herein, and excepts to the findings of fact and conclusions of law hereinafter set out.

1. For that the master erred in that part of his report, page 12, wherein he stated: "For the purpose of providing loads for the eastbound empty cars, and in that way getting back some proportion of the expense of hauling these cars east, the railroads installed the old 40-cent rate to St. Paul." The master should have found substantially as follows: "For the purpose of providing additional revenue and believing that 40 cents was reasonable compensation to begin with, the railroads installed the old 40-cent rate to St. Paul." (Rec., 1274, 1275.)

2. For that the master erred in the following statement, page 12: "The lumber industry in the coast district has grown to enormous proportions and become an exceedingly prosperous industry."

He should have found: "The lumber industry in the coast district has grown to enormous proportions and has become a prosperous industry." (Rec., 1045, et seq.)

3. For that the master erred in the statement of his finding of fact IV, page 15, wherein he stated: "The superseded rates were made voluntarily by the carriers in 1893, avowedly for the purpose of stimulating the lumber industry in the coast territory and thereby producing a traffic for the roads and more particularly and immediately for utilizing an eastbound empty car movement then prevailing. At that time the balance of trade was against the coast territory and there was a well defined eastbound empty car movement from the coast.

The master should have found: "The superseded rates were
204 made voluntarily by the carriers in 1893, as alleged at the hearing, for the purpose of stimulating the lumber industry in the coast territory and thereby producing a traffic for the roads which would furnish adequate revenue under the circumstances. The 40-cent rate was first made by the Great Northern Railroad and was announced several months prior to the date when that railroad was opened for business from Seattle. At the time the 40-cent rate was established it was not known whether there would be an empty eastbound car movement." (Rec., 1274, 1275.)

4. For that the master erred in line 11, page 17, wherein he used the word "mills." He should have used the word "materials." (14 I. C. C., 4.)

5. For that the master erred in failing to insert after the word "feet," in line 15, page 17, the following: "Valued at the mills at $30,000,000.00." (14 I. C. C., 4.)

6. For that the master erred in the finding, page 19, first paragraph: "At the same time there also existed a financial depression, sometimes designated as the panic of 1907, which must also be considered in arriving at the causes of the depression then existing in the lumber business."

The master should have found: "Even before the financial depression was felt on the Pacific coast, the lumber industry was greatly depressed and operations were largely decreased." (14 I. C. C., 7; Rec., 402.)

7. For that the master erred in failing to insert after the word "cent," line 3, page 21, the following: "At the time the 40-cent rate was established to St. Paul the empty-car movement was not a fact to be considered in making the rate." (Rec., 1274, 1275.)

8. For that the master erred in his finding, beginning line 4, page 22, as follows: "This sharp and sudden decrease in the percentage of eastbound loaded-car mileage over westbound loaded-car mileage in the year ended June 1, 1907, was, however, not normal:
205 but due to temporary and unusual causes, viz, the construction of the Chicago, Milwaukee & St. Paul coast extension and the Seattle and Portland line, most of the supplies for which were taken out over the northern lines, and also to the unprecedented storms, snowfall, and excessive cold weather prevailing in the winter of 1906 and 1907, which resulted in a practical suspension of business on the through lines for three months."

The master should have found: "There is no satisfactory explanation of this sharp and sudden decrease in the percentage of eastbound loaded-car mileage over westbound car mileage in the year ending June 1, 1907. The complainants, however, advance the theory that it was occasioned in a large degree by the carriage of supplies for the construction of the Chicago, Milwaukee & St. Paul coast extension and the Seattle and Portland line, to storms, snowfall, and excessive cold weather in the winter of 1906 and 1907. There is no

evidence as to the empty-car movement or the movement of east or westbound loaded cars during the years ending June 1, 1908, and June 1, 1909; nor is there any evidence as to the cost of handling, or the revenue resulting from handling the lumber traffic subject to the order complained of in these cases. The evidence to show these facts is all in the possession of the complainants." (14 I. C. C., 16, 33.)

9. For that the master erred in the following finding, beginning line 2 from the bottom of page 22: "This increase is fairly illustrated by the testimony of the witness, R. I. Farrington, relating to the cost of operation of the Great Northern road. He testifies: 'Taking the year 1895 as 100 per cent, the cost per freight-train mile for the calendar year 1900 was 143.82 per cent of 1895; for the eleven months ended November 30, 1907, the cost per freight-train mile was 207.7 of 1895. Of course, in 1907, it is more than twice what it was in 1895 per freight-train mile. Per freight-car mile, using 1895 as 100 per cent, the cost in 1900 was 126.19 per cent, and the cost in 1907 was 162.77 per cent. Consequently it cost nearly 63 per cent more to haul a freight car one mile in 1907 than it did in 1895." (Equity rule 76.)

The master should have found instead thereof: "While the cost of operation has constantly increased, the economy of operation has kept pace therewith. The minimum carload of lumber has greatly increased, engines haul much heavier trains, roadbeds have been improved, so that the cost of hauling a single unit compared with the revenue therefrom is much less than in 1893." (Rec., 754, 761.)

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10—For that the master erred, Finding XV, page 23, line 20, in failing to insert after the word "industry" the following: "and other traffic." (Rec., 1441.)

11—For that the master erred, Finding XVI, page 23, in inserting in the last line on said page the word "Fairly."

12—For that the master erred in inserting the word "fairly," line 3, page 24.

13—For that the master erred in Finding XVII, page 24: "By this order a rate of 50 cents per one hundred pounds over the Union Pacific system to Omaha and Missouri River points on said Pembina-Port Arthur line was established."

That finding should have been: "By this order the rate of 50 cents per one hundred pounds, previously and for many years in effect, over the Union Pacific system to Omaha and Missouri River points on said Pembina-Port Arthur line was not disturbed." (14 I. C. C., 1 et seq.)

14—For that the master erred in the finding, line 19, page 24: "And that such revenue is far below the average revenue per ton mile on any of the complainants' roads, and that this 50-cent rate over this system to Omaha is a very low rate."

15—For that the master erred in the finding, line 25, page 24: "Omaha and St. Paul are on a parity as bases of through rates, and

are so considered by the commission and by rate experts." (See commission's decision in Spokane v. Northern Pacific Railway Company, decided June 7, 1910, 19 I. C. C., 162.)

16—For that the master erred in the finding, beginning last line, page 24: "This rate will undoubtedly result in a revenue to
207 the northern lines measurably less than the revenue yielded to the Union Pacific Line by the 50-cent rate to Omaha."

17—For that the master erred in inserting in line 25, page 25, the following: "While it is probable that."

18—For that the master erred in his finding, beginning line 1, page 26: "It is sufficient to say, that while there are differences between his conclusions and those reached by the witnesses produced by these companies on this subject, those differences appear to be minor in their character and relation to the whole subject. The basis adopted by these companies for the preparation of these schedules is approved and supported by the engineer employed by the defendant. So far as the examination by the defendant's engineer went, it is apparent that the results reached are not widely apart from those reached by the engineers of the railroad companies." (Rec., 781 et seq.)

The finding is upon a matter wholly immaterial and irrelevant to the issues in these causes and is not supported by any evidence in the record.

19—For that the master erred in inserting in line 24, page 26: "And in fact all of the essential statistics necessary to a clear understanding of the results of the business of these two companies during the period covered by the figures."

20—For that the master erred in his finding, last paragraph, page 26: "Of the method made use of in these cases for the purpose of indicating the approximate value of these properties, it is perhaps sufficient to say that each method seems supported by ample judicial authority and to be of value in the consideration of the complex questions involved."

The finding is upon a matter wholly immaterial and irrelevant to the issues in these causes and is not supported by any evidence in the record.

21—For that the master erred in the following finding,
208 page 27, third paragraph: "In the conclusion at which the master has arrived, it seems unnecessary to consider this argument further than to say that from the evidence it is reasonably plain that the value of the property of these companies devoted to the public service is substantially above the amount represented by the par value of their outstanding stocks and bonds."

This finding is not supported by the evidence in the record.

22. For that the master erred in inserting the word "fair" in line 25, page 28.

23. For that the master erred in the following finding, last line, page 28: "Upon the whole record I find no evidence that tends to indicate that during the period covered by the evidence in this case,

the results from operation of either of these companies were in any degree excessive." (Rec., 646, 647, 14 I. C. C., 7.)

24. For that the master erred in the following finding, line 5, page 29: "On the contrary, upon a more critical consideration of the question of the true value of these properties in the light of the rule laid down by the Supreme Court of the United States in Smyth v. Ames, 169 U. S., 522, and subsequent decisions, if that were necessary or immediately germane to the issues here presented, it is probable that the net returns in recent years have been below rather than above the measure of a fair return upon the reasonable value of the properties used in the public service as defined in those decisions."

There is no evidence of original cost of construction, amount expended in permanent improvements, present cost of construction compared with original cost of construction, the probable earnings upon the rates complained of, or operating expenses probable during life of order.

209 Requested finding of fact.

The defendant objects and excepts to the failure of the special master herein to make each and every of the following findings of fact:

1. The rates provided for in the schedules to become effective November 1, 1907, were enjoined by the Circuit Court of the United States, having jurisdiction, and the same were never collected by the complainants herein. Shippers of lumber continued to pay the rates in effect prior to November 1, 1907, and no part of the revenues of the carriers were due to the increase in lumber rates provided for in November 1, 1907. (Complainant's brief, 3.)

2. The net returns per mile of railroad for each of complainants was much greater at the time of the hearing before the commission than they were ten years before. Freight-car capacities had greatly increased, much larger train tonnage was hauled, train crews handled much more tonnage, engine capacity had greatly increased, and much more than kept pace with the increased cost of labor or of construction. (Rec., 754, 761.)

3. The 50-cent lumber rate over the Union Pacific Railroad covers as a blanket rate all points from Medford, Oregon, 350 miles south of Portland to Cascade Locks, 45 miles east of Portland, the center of origin being 152 miles south of Portland; this rate covers as blanket rate all destination points from Brule, Nebraska, 350 miles west of Omaha to Omaha, the center of destination being 175 miles west of Omaha. The distance from the center of origin to center of destination is 1,676 miles. The per ton-mile rate for the average distance is 5.96 mills.

The 45-cent lumber rate over the Northern Pacific covers as a
210 blanket rate all points of origin from South Bend, Washington,
to , 143 miles east of Tacoma, the center of origin being
16 miles east of Tacoma; this rate covers as a blanket all points of

destination from Glendive, Montana, 676 miles west of St. Paul to St. Paul, the center of destination being 338 miles west of St. Paul. The distance from center of origin to center of destination being 1,558 miles. The per ton-mile rate is 5.78 mills. (Rec., 938, 1443.)

On all shipments to Chicago via Omaha upon which the rate is 55 cents the Union Pacific receives for its haul only 45 cents. On all shipments to Chicago via St. Paul on which the 55 cent rate applied the Hill lines received for the haul to St. Paul 45 cents.

4. Rates have been voluntarily put into effect and are now in effect from Spokane to Winnipeg over the Northern Pacific and the Canadian Northern and the Great Northern and the Canadian Northern of 37 cents per one hundred. Via the Northern Pacific the distance is 1,545 miles. Via the Great Northern, 1,356. From Bellingham, Washington, via the Northern Pacific to Winnipeg the distance is 2,094.3 miles, and the rate is 40 cents per one hundred pounds, out of which three cents is paid to the local road from Bellingham to Sumas Junction, 23.3 miles, leaving 37 cents to be divided between the Northern Pacific and Canadian Northern for 2,071 miles. The same condition prevails from points on the Tacoma and Eastern to Winnipeg, where out of a rate of 40 cents for a haul of 1,491 miles the Northern Pacific received as its share 36 cents. From Kendall, Washington, the rate via the Northern Pacific or Great Northern and Bellingham Bay and British Columbia Railroad, the first named carrier receives out of 40 cents, 37½ cents for a haul of 2,071 miles over the Northern Pacific and 1,817 miles over the Great Northern. (See Defendant's Brief, 272.) When these rates and distances are compared with a haul of 1,564 miles to Jamestown, North Da-
211 kota, on the Northern Pacific, and 1,896 miles to Minneapolis over the same road, and with substantially similar distances over the Great Northern upon which a rate of 45 cents has been prescribed by the commission, it would appear that the 45 cent rate is a very liberal rate for the carriers.

5. From a careful examination of all the evidence I find nothing of any importance showing, or tending to show, that the complainants herein are not receiving adequate compensation for the services which they rendered the public. Any injunction against the order of the commission will operate to increase the revenue of the complainants beyond anything they have yet received upon lumber traffic. No statement is made by complainants or any of their witnesses that if an injunction is granted, thereby increasing the revenue of the carriers, there will be any reduction on any other commodities or any class of traffic. Nothing save opinion evidence is given upon the question of remuneration of the particular rates here under investigation. The commission prescribed 45 cents as a reasonable rate for the haul to St. Paul and Minneapolis. Measured by this standard and by the rates charged upon lumber over the lines of these complainants and of other carriers, the rates prescribed by the commission in no sense are less than the carriers are entitled to.

6. The evidence does not disclose whether the conditions and circumstances surrounding the movement of traffic from the Pacific coast to Omaha are similar or dissimilar to those appertaining to the haul from Pacific coast points to St. Paul and Minneapolis, except the elevation is much greater over the Union Pacific than over the Great Northern and Northern Pacific. (Rec., 1023.)

7. The record fails to disclose the amount of the tonnage subject to the commission's order which is hauled by complainants. It does appear that during the year ending June 30, 1907, of the whole amount of tonnage hauled by the complainants, products of
212 the forest constituted on the Union Pacific 7.86 per cent, on the Northern Pacific 37.38 per cent, on the Great Northern 14.8 per cent. How much of this percentage is carried at rates prescribed by the commission does not appear. These percentages cover both State and interstate eastbound and westbound movement. The commission's order applies only to interstate eastbound. (14 I. C. C., 16.)

8. Lumber is a low-grade commodity, is loaded and unloaded by the shipper, requires but little service, loads far beyond the average per car and upon the whole is very desirable traffic. I find no evidence which shows or tends to show other than mere opinions of interested parties that lumber subject to the orders herein does not pay its fair proportion of the income which the complainants have or should have.

Conclusions of law.

Defendant objects and excepts to the following conclusions of law made by the special master herein:

1. For that the master erred in the 9th conclusion, page 31, wherein he stated the law as follows: "An administrative tribunal is not as free to act within the scope of its limitations as is a legislative tribunal, because in addition to its constitutional and statutory limitations it is further limited by the spirit, intent, and purpose of its organic act and the fundamental principles underlying it and because of which it was enacted."

2. For that the master erred in overruling each and every objection entered by defendant to the admission of evidence as shown on pages 39, 40, and 41 of volume 1, of the printed record herein.

3. For that the master erred in holding, line 18, page 42: "That the carriers have a right to and frequently do temporarily carry commodities at less than cost for purposes of ultimate future benefit; and because also it is sometimes necessary and requisite to compel them to carry commodities at less than cost on grounds and for reasons of public policy."

213 4. For that the master erred in holding, line 18, page 45: "It is not true that within the specified limits of its jurisdiction an administrative body is as untrammelled as is a legislative body. Within constitutional limitations a legislative body is absolutely beyond control and may pass bad, vicious, injudicious, and calamitous laws."

5. For that the master erred in holding, line 1, page 47, that there does inhere in the Federal courts of equity power to review rates made by the commission to determine "whether or not the delegated power has been exercised in a just and r'asonable manner."

6. For that the master erred in reaching the following conc'usions, paragraph 3, page 49: "It does, however, appear that they are very low rates and unusually favorable to the shippers and to the public."

7. For that the master erred in reaching the following conclusion, paragraph 4, page 49: "In restoring the superseded rates to the Pembina-Port Arthur line, including the old 50-cent rate over the Union Pacific System to Omaha, the commission has necessarily found and determined that the 50-cent rate to Omaha and Missouri River points was and is a just and reasonable rate, and the court has a right to take them at their own opinion on this point."

8. For that the master erred in reaching the following conclusion, paragraph 5, page 49: "If it be true that a 50-cent rate to Omaha is a just and reasonable rate (and the commission has so found), then it must inevitably follow that the rate of 45 cents to St. Paul and 55 cents to Chicago are unjust and unreasonable rates."

9. For that the master erred in reaching the following conclusion, paragraph 6, page 49: "The difficulties and expenses of tranportation over the Union Pacific line and the Northern lines are fairly equal. The route over the Northern lines to St. Paul is longer. But St. Paul and Omaha have always been considered by the commission and by rate-making experts as on a parity as bases of rates."

214 10. For that the master erred in reaching the following conclusion, paragraph 7, page 49: "The rate of 10 cents to Chicago from St. Paul is conceded to be an unusually low rate, and is conceded by the commission to be just and reasonable."

11. For that the master erred in reaching the following conclusion, paragraph 8, page 49: "If, then, 50 cents to Omaha is just and reasonable, 45 cents to St. Paul must be grossly unjust and unreasonable, strongly tending toward confiscation of property of the northern lines, strongly tending toward unjust discrimination against the northern lines and in favor of the Union Pacific, and strongly tending to unduly prefer the territory served by the northern lines over that served by the Union Pacific, and in all these features to be a gross, arbitrary, and palpable disregard and perversion, not only of the spirit and intent of the law, but of the very terms of the law itself wherein it forbids unjust discrimination against carriers and localities and undue preferences to carriers and localities."

12. For that the master erred in reaching the following conclusion, line 7, page 50: "It will be said that the 45 cent rate, though confessedly less than that which is just and reasonable as found by the commission, is nevertheless not sufficiently so in its relation to the whole body of net returns, to result in confiscation. This is probably true. There is no evidence to show whether it is or not. But on the commission's own basis it is 10 per cent less than what the commission themselves have determined to be just and reasonable, and in itself is

so inconsistent with and violative of the fundamental principles of rational justice, so incompatible with the commission's own expressed notions of what is just and reasonable as to manifest and evince upon its face an arbitrary violation of the spirit and intent of the law, and an arbitrary disregard of the fundamental principles of the interstate commerce act out of which their powers grow and in accordance with which their powers must be exercised."

13. For that the master erred in reaching the following conclusion, line 22, page 50: "These orders further appear to be inconsistent in dealing with the differential between Omaha and Chicago and St. Paul and Chicago. Omaha and St. Paul are on a parity as bases of rates to Chicago, and yet the Union Pacific is allowed a 5 cents per one hundred pounds differential to Chicago while the northern lines are allowed 10 cents. And the 10 cent rate from St. Paul to Chicago is and always must be an exceedingly low rate because of water competition. It seems absurdly inconsistent to compel the Union Pacific road to make the haul from Omaha to Chicago for 5 cents and allow the northern lines 10 cents for the same haul, and further illustrates the inconsistency of the commission's order."

14. For that the master erred in the following conclusion, line 16, page 52: "Using these points as fairly illustrative of the character of the coast rates to the so-called Missouri River territory, as they fairly may be used, it is difficult to escape the conclusion, if it were the function of this court to fix a just and reasonable rate upon this traffic for the service rendered to points such as these, that rates of this character are unduly low."

15. For that the master erred in reaching the following conclusion, line 6, page 53: "From what has been said above, it cannot be denied that there was substantial evidence that the rates in question to Missouri River points are at least upon a low basis upon the traffic in question in these cases."

16. For that the master erred in reaching the following conclusion, beginning last line, page 53: "As already seen, the defendant is without power to establish rates upon any other basis, and it is, therefore, the irresistible conclusion that for the distance and under the conditions involved, the pre-existing scale of rates to this line was in the opinion of the defendant just and reasonable. The rate from Portland to Omaha seems to have been used by the defendant in reaching its conclusions as fairly illustrative and we are, therefore, furnished in these cases by the defendant itself, with a valuable measure for determining whether its orders in disturbing rates here involved, but to points east of the Pembina-Port Arthur line, should also be supported. If we find that for equivalent or greater distances and under substantially similar conditions a similar rate was condemned and a lesser rate required, we may properly inquire for the reasons for this seeming inconsistency, and unless satisfactory reasons appear, the final inquiry is necessarily presented whether a case such as that pointed out in the decision of the Supreme

Court in Interstate Commerce Commission v. Illinois Central Railroad Company *et al.*, *supra*, is not presented? Stated differently, the inquiry is whether the act of the defendant, without apparent reasons, in disapproving the identical rate of 50 cents per hundred pounds for substantially the same or a greater distance, and requiring a lower rate for apparently the same character of service, is not the exercise of authority manifested in such an unreasonable manner as to be beyond the power delegated to the defendant?"

17. For that the master erred in reaching the following conclusion, beginning line 27, page 54: "This inquiry necessarily follows for the reason that, having prescribed a rate of 50 cents per hundred pounds as the measure of a just and reasonable rate for a given distance, it cannot be true in reason that for the same or a great distance, under similar circumstances of transportation, a substantially lower rate is at the same time just and reasonable."

18. For that the master erred in reaching the following conclusion, beginning first line, page 55: "In considering this branch of the case it is to be understood that the distance from Portland to Omaha is but typical and illustrative, and that the same rate applies from many other coast points of production and to other Missouri River points of destination, resulting in a variety of combinations of distances varying within considerable limits. So, also, in considering the rates to St. Paul and Minneapolis, over the lines of the Great Northern and Northern Pacific systems, the same conditions are true. The coast rates apply to St. Paul, Minneapolis, and Duluth from a variety of shipping points in the coast territory reaching to the international boundary, so that as to the rates over these lines a variety of combinations of distances may be found. From Tacoma, Washington, to Minneapolis, via the Northern Pacific lines, is substantially 1,896 miles; from Portland to St. Paul via this line it is 2,052 miles,
and as an illustration of longer hauls to St. Paul, via this line,
217 the distance from Astoria to St. Paul is 2,072 miles. Substantially similar results are obtained upon the Great Northern lines."

19. For that the master erred in reaching the following conclusion, beginning 20th line, page 55: "It is not therefore unfair to adopt an average of conditions, and, indeed, this seems to have been the basis upon which the defendant proceeded."

20. For that the master erred in reaching the following conclusion, line 23, page 55: "It will be recalled that prior to the reduction in 1893 by the Great Northern the basis of rates on lumber and forest products to St. Paul and to Omaha from the Pacific northwest was the same. The rate to each point was then 55 cents per hundred pounds. The reasons which led to the reduction in the rate to St. Paul at that time have already been considered, and the disturbance of the equal basis of rates to these points seems to have been the result of competitive and market conditions of a special or exceptional character. It is understood that upon many other items of traffic rates between Omaha and St. Paul on the one hand, and the coast

territory on the other, have always been the same, and, indeed, in the recent decision by the defendant of the case of the city of Spokane et al. v. Northern Pacific Railway Company et al., decided June 7, 1910, 19 I. C. C., 162, rates on classes and commodities, generally, to Spokane territory are fixed upon the same basis from St. Paul as from Omaha. This decision involves westbound traffic, it is true, but in it the defendant used the following language, which seems to support the conclusion that in the absence of exceptional circumstances, rates applying between St. Paul and Omaha on the one hand, and points in the coast territory, as well as the Spokane territory on the other, should nominally be upon an equal basis.

Thus the commission said in the case above cited:

There is no condition of construction or operation or financial result which would justify the Union Pacific lines in maintaining a higher rate for 1,500 miles from Omaha west toward Portland than is maintained by the Northern Pacific and Great Northern for a corresponding distance west from St. Paul toward Seattle."

218 21. For that the master erred in reaching the following conclusion, line 21, page 56: "While, as stated, it is true that this observation relates to westbound traffic, and perhaps is not conclusive in considering this eastbound traffic, it nevertheless is persuasive, and in the absence of anything in the record before the master indicating differences in conditions in the eastbound traffic to Omaha, as compared with the eastbound traffic to St. Paul, it may be regarded in connection with the other considerations referred to as an important matter for consideration."

22. For that the master erred in reaching the following conclusion, line 29, page 56: "The fixing by the defendant, therefore, of rates upon an equal basis between the points under discussion, and the equal relation of rates of long standing referred to in the oral argument between these points seems to lead to the conclusion that the transportation conditions applying between these points are substantially alike."

23. For that the master erred in reaching the following conclusion, line 22, page 57: "As its reasons for permitting an advance east of the Pembina-Port Arthur line, the defendant said in the so-called Washington case (No. 1329): 'To certain points farther east, involving longer hauls, it is believed that there was justification for some advance in view of the less revenue per ton mile accruing to the carriers from this traffic.'"

24. For that the master erred in reaching the following conclusion, line 29, page 57: "The controlling reason, therefore, that appeared to move the defendant to permit an advance of not to exceed 5 cents per hundred pounds was the longer haul involved to points east of the Pembina-Port Arthur line and the consequent lesser revenue per ton per mile. St. Paul, Minneapolis, and Duluth are east of the Pembina-Port Arthur line and as already shown traffic to these points from the coast territories probably involves on the average substantially longer hauls than to Omaha; certainly traffic to the northern

destinations referred to involves no lesser haul than to Omaha, and it may safely be said that the average distance between points
219 which, under the commission's orders take the 45 cent rate, is generally greater than the average distance between points where under the commission's orders the 50 cent rate applies."

25. For that the master erred in reaching the following conclusion, line 11, page 58: "The revenue per ton mile, however, accruing to the Great Northern and Northern Pacific lines, even under the 50 cent rate published by them in their tariffs of November 1, 1907, is in many important instances measurably less than the revenue per ton mile accruing upon traffic to Omaha under the 50 cent rate approved to that point. Under the 40 cent rate the revenue per ton mile on traffic from Portland to St. Paul as shown by the record was 3.90 mills and under the 50 cent rate, contained in the tariffs of November 1, 1907, it would be 4.87 mills. From Tacoma to Minneapolis, as shown by the evidence, under the 40 cent rate the revenue per ton mile was 3.98 mills, and under the 50 cent rate would be 5.27 mills. Under the 50 cent rate approved from Portland to Omaha the revenue per ton mile is 5.56 mills. These figures may be taken as fairly representative of conditions and seems to clearly demonstrate that the revenue per ton mile earned by the carriers transporting this traffic to St. Paul and common points even under the 50 cent rate would be substantially less than the revenue per ton mile accruing to carriers in the traffic to Omaha, and, therefore, if the reason given by the commission for permitting an advance in rates to points east of the Pembina-Port Arthur line seem to it to be of sufficient weight to authorize their action in that regard, it is impossible to understand why the same reasons do not compel a recognition of the 50 cent rate to St. Paul as just and reasonable."

26. For that the master erred in reaching the following conclusion, line 4, page 59: "Notwithstanding the apparently conclusive character of the result thus indicated by applying the measure thus furnished by the defendant for determining a just and reasonable rate for the distance and under the conditions in question it may be said to still be the duty of the court upon the whole record before it to determine whether the 50 cent rate in and of itself is in anywise unjust or unreasonable to appled to this traffic to St. Paul and points taking the same rate."

220 27—For that the master erred in reaching the following conclusion, line 12, page 59: "The complainants sought to prove the issue in this regard by various methods. They called numerous witnesses of wide experience in railroad traffic affairs and these witnesses, expressing their opinion and adding reasons therefor, were agreed not only that the 40-cent rate previously in effect to St. Paul was unreasonably low, but that the entire body of rates upon this traffic to eastern points of delivery was below what they properly should be. Witnesses for the railroad companies offered in addition numerous exhibits comparing the pre-existing rates, as well as the proposed rates and earnings therefrom, with lumber rates from

other sections of the country and with lumber rates applying upon their own lines. There were also numerous comparisons of the rates and earnings on other commodities with lumber based both upon earnings per ton mile and upon earnings per car. In addition to these methods of dealing with the questions involved, witnesses of experience sought to further support the position of the railroads by the making of approximate computations of the cost of handling this lumber traffic. Regarding these computations, however, it may be said that the results while instructive as showing approximate or average results are not sufficiently close to the mark to be conclusive. The evidence relating to the expense resulting from the haul of empty cars westbound seems clearly to indicate that there is a large element of expense involved in this traffic on that account on the Northern Pacific and Great Northern lines at least. And it may be said that the opinions of the witnesses upon this branch of the proof offered tend strongly to support the judgment of the same and other witnesses that the rates in effect prior to November 1, 1907, in so far as they covered the longer hauls, produced less revenue in comparison with the probable cost involved in the traffic than reasonably might be demanded."

28—For that the master erred in reaching the following conclusion, line 12, page 60: "A careful consideration of all of the testimony and exhibits offered before the master in behalf of the defendant upon the question of the character of these rates has failed to disclose any substantial proof in opposition to that offered on this
221 subject by the complainants. The effect which, under the authorities must be given to the conclusions of the defendant, has led to the result as above indicated that this record does not present evidence so clear and convincing as to justify in the opinion of the master an injunction against the rates approved by the commission to points on and west of the Pembina-Port Arthur line, but weighing the proof applicable to the rates applying to points east of that line in connection with the conclusions reached by the defendant regarding the rates to the line, and in the light of the reasons advanced by it for those conclusions, it is the finding and opinion of the master upon the entire record that the orders of the defendant adjudging the rates filed by the carriers to points east of the Pembina-Port Arthur line on November 1, 1907, to be unjust and unreasonable cannot be supported and that, indulging every reasonable inference from the proof and the necessary inferences from the findings of the defendant itself, the orders in so far as they displace the rates contained in the tariffs of November 1, 1907, to points east of the Pembina-Port Arthur line and in lieu thereof permit only the advance of not to exceed 5 cents per hundred pounds over the pre-existing rate, should be set aside and enjoined."

29—For that the master erred in reaching the following conclusion, line 6, page 61: "By the effect of the orders of the defendant finding the rates to points east of the Pembina-Port Arthur line to be unjust and unreasonable the rates contained in the tariffs of November 1,

1907, not only to St. Paul and common points, but also rates to destinations further east, were disturbed. The tariffs of November 1, 1907, fixed a rate upon lumber from the coast territory to Chicago of 60 cents. This rate was constructed by adding to the rate of 50 cents, fixed in said tariffs, to St. Paul, a rate of 10 cents per hundred pounds to cover the transportation from that point to Chicago. There is nothing in the record nor in the decisions or orders of the defendant indicating that this rate of 10 cents was complained of, and it appears from the manner in which the defendant disposed of the cases that this rate was approved as a factor in determining the rate to Chicago. This necessarily follows because, complying with the orders of the defendant and using the rate fixed by it to St. Paul of 45 cents, the carriers filed and published a rate of 55 cents to Chicago.

222 30. For that the master erred in reaching the following conclusion, line 12, page 62: "The distance from St. Paul to Chicago by railroad is about 410 miles; the earnings per ton mile on traffic under the rate of 10 cents in effect are approximately 5 mills. An examination of the various tables of rates contained in this record applied on numerous railroads in various parts of the country indicates that for a distance of this kind this rate is upon a reasonably low basis. It is impossible to see wherein a lower rate than this could be justified or at least required for the distance in question, and, therefore, having reached the conclusion that the orders of the defendant disapproving the rate of 50 cents published to apply on November 1, 1907, to St. Paul and common points cannot be supported, it must necessarily follow that the orders of the defendant in disapproving the rate filed and published to apply on November 1, 1907, of 60 cents to Chicago must also be disapproved, and should be for the same reasons enjoined. This traffic, however, is moved to Chicago and other points east and south thereof via Omaha and other points on the Missouri River in competition with the lines operating through St. Paul and Minneapolis. This 60-cent rate established in the tariffs on November 1, 1907, to Chicago applied via lines leading through Omaha and other Missouri River points. The distance from Omaha to Chicago is approximately 500 miles. It appears from the record that the carriers between Omaha and the Missouri River and Chicago on this traffic received 10 cents per hundred pounds out of the total rate to Chicago, although at times in the past in order to secure this amount the carriers west of the Missouri River have been required to allow all or a portion of this rate out of the earnings accruing to them from the rate to Omaha. In the tariffs of November 1, 1907, the effort was made to advance the rate to Omaha to 55 cents, whereby it appears that out of the rate proposed of 60 cents to Chicago the carriers west of Omaha would not have been compelled to have allowed the entire 10 cents out of their earnings accruing from the rate to Omaha. The question of divisions between carriers is not involved in the issues in these cases, and all that the court can consider in this regard is the question whether there

is anything in the records to indicate that the addition of 10 cents to the rate of 50 cents approved by the commission to Omaha would be unjust or unreasonable for the transportation of this traffic
223 from Omaha to Chicago. Considering all the facts relating to the character of the 10-cent rate above referred to in its application between St. Paul and Chicago, for the distance involved and under the conditions disposed in the record, it cannot be successfully claimed that for the greater distance from Omaha to Chicago the same rate is either unjust or unreasonable. Regardless of the questions involved between the carriers in meeting competitive conditions in the rate to Chicago via Omaha, the question is presented whether the orders of the defendant in disapproving the rate of 60 cents fixed by the tariffs of November 1, 1907, to Chicago can be sustained, and for the various reasons hereinbefore referred to it is plain that this rate, whether applied via St. Paul or via Omaha, neither was nor is unjust or unreasonable. If 50 cents was, as determined by the commission, just and reasonable to Omaha, it is impossible to understand wherein 60 cents was unjust or unreasonable for the added distance of approximately 500 miles to Chicago."

31. For that the master erred in reaching the following conclusion, line 6, page 64: "There is a recognized relation between these rates to the various points of destination east of St. Paul and Omaha, and Chicago has been taken hereinabove as typical only of conditions generally affecting rates to all such destinations; in fact, in the orders of the defendants permitting an advance not to exceed 5 cents per hundred pounds east of the Pembina-Port Arthur line the commission proceeded on the theory that the relation referred to when observed would produce a relation of rates that would be just and fair, and for this reason it is unnecessary for the court in determining the issues presented by these cases to deal with the orders of the defendant in their effect upon rates to points east of the Pembina-Port Arthur line other than as above indicated."

32. For that the master erred in reaching the following conclusion, line 19, page 64: "In conclusion, therefore, the master is of the opinion, and so finds, that the orders of the defendant adjudging the rates contained in the tariffs filed by the complainants, and effective November 1, 1907, to points east of the so-called Pembina-Port Arthur line, to be unjust and unreasonable cannot be approved;
224 that the orders of the defendant requiring the rates to points east of said line to be withdrawn and in lieu thereof restricting the complainants to an advance of not to exceed 5 cents per hundred pounds to said points for the same reasons cannot be supported, and the master recommends that an injunction be issued against the orders of the defendant to the extent aforesaid, and that said orders, in so far as they adjudged the rates contained in the tariff of November 1, 1907, in question, to points east of the so-called Pembina-Port Arthur line, to be unjust or unreasonable and prescribed rates lower than those contained in said tariffs to said points in lieu thereof, be set aside and annulled."

33. For that the master erred in reaching the following conclusion, line 4, page 65: "By the order in the so-called Potlatch case (No. 1348), which is one of the orders sought to be enjoined in these proceedings, the defendants fixed rates from points in eastern Washington, eastern Oregon and Montana, to points east of the Pembina-Port Arthur line, which were less by fixed differentials than the rate to the same territory from points on the Pacific coast. The justness and reasonableness of these differentials are not attacked in these cases, but it follows from what has been said above that as the order of the commission fixing base rates from Pacific coast points to territory east of the Pembina-Port Arthur line must be enjoined, in so far as it forbids the collection of the rates fixed to that territory by the tariffs effective November 1, 1907, the order of the commission in the Potlatch case must likewise be enjoined to the extent that by the application of the differentials fixed by that order the rates from eastern Washington, eastern Oregon, and Montana are reduced below those fixed from the same territory to points east of the Pembina-Port Arthur line by the tariffs effective November 1, 1907."

34. For that the master erred in reaching the following conclusion, line 2, page 66: "From the findings that the defendant's orders condemning the rates of November 1, 1907, on fir lumber to points east of the Pembina-Port Arthur line should be enjoined, it follows that those orders should be enjoined in so far as they condemn those rates and prescribe lower rates on other lumber, shingles, and other forest products to points east of that line and it is so recommended."

225 35. Defendant objects and excepts to the proposed decree of injunction for that the same is a modification of the commission's order, while the statute does not confer upon the court power to act other than upon the order as a whole by enjoining, suspending, or sustaining the same in toto.

36. For that the master erred in recommending entries of decrees of injunction in each of the said cases in the form used in said report.

37. For that the master erred in failing to recommend decrees dismissing the bills of complainant in each of the said causes.

Wherefore, defendant by its solicitors respectfully prays that in all of which particulars herein set out the report be varied and altered so as to conform to the facts and the law applicable thereto.

LUTHER M. WALTER,
CHARLES C. HOUPT,
Solicitors for Defendant.

J. N. TEAL,
W. A. WIMBISH,
Of Counsel.

226 Exhibit B. In the Circuit Court of the United States, for the District of Minnesota, Third Division.

UNION PACIFIC RAILROAD COMPANY ET AL., *vs.* THE INTERSTATE COMMERCE COMMISSION.	In Equity. No. 883.
NORTHERN PACIFIC RAILWAY COMPANY et al., *vs.* THE INTERSTATE COMMERCE COMMISSION.	In Equity. No. 884.
GREAT NORTHERN RAILWAY COMPANY et al., *vs.* THE INTERSTATE COMMERCE COMMISSION.	In Equity. No. 885.

Complainants' Exceptions to Master's Report.

Come now the complainants and make the following exceptions to the report of the master dated July 22, 1910:

I. They except to that finding and conclusion of the master, appearing on page 13 of the report as printed, reading as follows: "It further clearly appears that during all these years these railroads have been prosperous. They have paid all the interest on their bonds and outstanding indebtedness, paid dividends upon their stock, spent vast sums of money in extensions, reproducing equipment and improvements and in addition thereto have accumulated large surplus funds."

And to that finding and conclusion of the master, appear-
227 ing on pages 23 and 24 of the printed report, reading as follows: "During all this period, and particularly since 1897, these roads have earned satisfactory incomes. They have paid all interest on their bonds and indebtedness, all operating expenses, fairly satisfactory dividends on their stock, vast sums in improvements and extensions, and have accumulated handsome surpluses, and clearly appear to have been on the whole prosperous, and to have earned fairly satisfactory net incomes from their transportation," upon the ground that it appears from the testimony that the earnings of the Northern Pacific Railway Company and of the Great Northern Railway Company during the periods referred to in said findings have not yielded a fair return upon the fair value of the property of said companies devoted to railroad uses. The evidence further shows that the properties of the Northern Pacific Company were in an insolvent condition and in the hands of receivers during a portion of the time down to the year 1896, and that the properties of the Union Pacific system were likewise insolvent and in receivers' hands during a portion of the time down to the year 1898.

The evidence showing the cost of reproduction of the Great Northern Railroad system contained in complainants' Exhibit 15, Hoge-

land, page 435, printed transcript of record; the evidence showing the value of the Great Northern system computed upon average market price of stocks and bonds for the period of five years ended June 30, 1908, introduced in evidence under stipulation and printed in complainants' reply brief, page 51, and complainants' Exhibit "A," Great Northern, at pages 653 to 664, inclusive, of printed transcript of record, showing gross earnings, operating expenses, taxes, net earnings and net income from operation, show that the net earnings upon the fair value of the properties of that company for the years 1904 to 1908, both inclusive, to have been less than a fair return upon the value of such properties.

228 The findings of the cost of reproduction of the Northern Pacific Railway Company, appearing in complainants' Exhibit 4, pages 116 to 135 of record, and the findings of the value of the property computed upon the basis of the average market value of bonds and stocks of said company for a period of five years, introduced in evidence by stipulation and printed on page 52 of complainants' reply brief, and the findings as to the earnings of said property during the entire period from its reorganization in 1896 down to and including the fiscal year 1909, appearing in complainants' Exhibit 22, page 595 of printed transcript of record, showing that the earnings from said property during the said period had not yielded a fair return upon the fair value thereof.

II. They except to that finding and conclusion of the master appearing on page 14 of the printed copy of the report, reading as follows: "The evidence consists, as before stated, merely of estimates made by experts in the employ of the complainants. In the opinion of the master it is so remote and speculative as bearing upon a particular rate as to be immaterial and it would serve no useful purpose to attempt to make a finding as to what it would cost under the circumstances and conditions indicated in the estimate to reproduce the roads in question. The master's opinion would be merely a guess and no better than the guess of the court, and inasmuch as it is conceded and admitted by the complainants that the real and true value of the roads are never considered in the making of rates and have nothing to do with them we think this evidence so remote and speculative as to be absolutely immaterial in this case."

And further except to paragraphs 5 and 6 of the conclusions of law upon page 30 of the printed copy of the report, reading as follows: "(5) But where the question under consideration is the

229 justness and reasonableness of a single rate on a single commodity, because it is impossible to determine the value of that portion of the properties involved in and devoted to the traffic in a particular commodity, the value of the properties as a whole bears so remotely on the proposition as to be immaterial and irrelevant. (6) And the reproductive value being only a collateral fact offered to influence the court's conclusion as to the ultimate fact of real value is too remote and speculative to be material or relevant to the question

of the justness and reasonableness of a single rate." For the reason that the master erred as a matter of law in holding that the evidence of the cost of reproduction of the Northern Pacific and Great Northern systems is so remote and speculative as bearing upon the particular rate as to be immaterial. The master erred in holding that upon the evidence thus introduced a finding based thereon would be merely a guess. The master erred in holding that the cost of reproduction of said properties was so remote and speculative as to be immaterial in determining the ultimate fact of the real value of said properties.

III. They except to that finding and conclusion of the master appearing on page 21 of the printed copy of the report, reading as follows: "Ever since 1903 the condition in respect to the predominance of empty car mileage has been changing until in 1907 the westbound empty car movement greatly predominated over the eastbound empty car movement. This result was not wholly due to the increase in the lumber traffic, but in part to the very great increase in the volume of other important commodities shipped from the West to the consuming markets of the East." For the reason that, as shown in Great Northern Exhibit 27, page 613, and Maguire Exhibit 3, page 1485, and in Northern Pacific Exhibit 25, at page 604, all in the printed transcript of record, it appears that almost the
230 entire volume of east-bound tonnage consisted of lumber and shingles during the year 1907.

IV. They except to those findings and conclusions of the master appearing on page 30 of the printed copy of the report reading as follows: "(2) The Constitution guarantees just compensation for private property devoted to a public use, and under this guaranty a carrier is entitled to charge rates which are justly compensatory for the services rendered. But inasmuch as it is his entire property which is devoted to the public use he is only entitled to just compensation for the entire use, and a particular rate need not in and of itself furnish just compensation for the particular service rendered, so long as it does not so affect the general body of net returns as to reduce them below what is just and reasonable. (3) Unless it appears that a single rate so affects the general body of net returns as to reduce them (the net returns) below what is just and reasonable, confiscation cannot be predicated upon it," and to those findings and conclusions of the master, appearing on pages 42 and 43 of the printed copy of the report, reading as follows: "In other words, confiscation cannot be predicated upon a single rate in and of itself, particularly because it is impossible to ascertain the true facts in reference thereto, but can only be predicated upon a single rate as it relates to and affects the general body of net returns. So that in inquiring as to the justness and reasonableness of a particular rate this constitutional question need not be considered any further than the relation of the rate to and effect upon the general business of the carrier and its entire body of net returns."

And to that finding and conclusion of the master appearing on page 44 of the printed copy of the report, reading as follows: "It seems clear, therefore, that in cases involving a single rate,
231 such as are the cases at bar, unless it is clearly shown that the relation and effect of the single rate to and upon the general body of net returns is such as to reduce the general net returns to less than that which is just and reasonable, no case of confiscation has been made out," upon the ground that the master erred as a matter of law in finding and holding that a carrier is only entitled under the Constitution and the act to regulate commerce to just compensation for the entire use of all its property, and that a particular rate need not in and of itself furnish just compensation for the particular service rendered; and further erred as a matter of law in holding that confiscation under the provisions of the Constitution cannot be predicated upon a single rate unless the reduction in that rate so affects the general body of net returns as to reduce the net returns as a whole below what is just and reasonable, for the reason that under the provisions of the Constitution and the limitations of power upon the Interstate Commerce Commission, as contained in the act to regulate commerce, the commission is without power to establish any rate or rates for transportation of property in interstate commerce that will not admit of the carrier earning such compensation for the service rendered as under all the circumstances relating to that service is just and reasonable.

V. They except to that finding and conclusion appearing on page 44 of the printed copy of the report reading as follows: "The carriers concede that they are unable to determine the cost of this traffic in and of itself, and that they are unable to say with any satisfactory accuracy whether or not they make a profit upon it, but they have all conceded that in their judgment, speaking as experts, the lumber traffic has not been confiscatory and has not been performed for less than cost."

232 And to that finding and conclusion, appearing on page 49 of the printed copy of the report, reading as follows: "There is not evidence in the record from which it clearly and persuasively appears that the rates established by the orders here in controversy are confiscations," for the reason that complainants have not conceded that the rates on lumber fixed by the orders of the commission involved herein were not confiscatory, and for the further reason that there is ample evidence in the record from which it clearly and persuasively appears that the rates fixed by the orders of the commission in controversy here are confiscatory. The evidence of the witness, James J. Hill, at pages 1267, 1276, 1278, 1280, 1288, 1294, and 1298 in the printed transcript of the record; the evidence of the witness, Howard Elliott, at pages 1372 to 1374, inclusive, therein; the evidence of the witness, J. G. Woodworth, at pages 3883 to 3891, inclusive, therein; the evidence of the witness, James A. Munroe, at page 306 and at pages 352, 264, 365; the evidence of the witness, J. G. Woodworth, at page 1475; the evidence of Dwight C. Morgan

at pages 800, 863; Woodworth Exhibit 1, page 1443; Woodworth Exhibit 2, page 1447; Maguire Exhibit 3, page 1485; R. B. Miller Exhibit 2, page 1500; Miller's statement, page 1512; Union Pacific statement, page 353; evidence of the witness, R. I. Farrington, page 1602, and following, and evidence of witness, James J. Hill, page 1280, clearly shows that the rates fixed by the orders of the commission complained of herein are confiscatory.

VI. The complainants further except to the finding and conclusion of the master denying the prayer for an injunction against the orders of the commission disapproving the rates filed by the carriers in their tariffs of November 1, 1907, to points on and west of the
233 so-called Pembina-Port Arthur line and in lieu thereof requiring the restoration of the rates previously in effect to points on and west of said line for the reason in exception number V that the evidence conclusively shows that the rates established by the carriers in the tariffs of November 1, 1907, to points on and west of said Pembina-Port Arthur line were neither unjust nor unreasonable, and conclusively shows that the rates ordered restored by the orders herein complained of were and are unjust, unreasonable, and confiscatory.

The complainants therefore pray that the report in the matters hereinbefore excepted to be modified and made to conform to the law and the proof contained in the record.

HALE HOLDEN,
F. C. DILLARD,
H. A. SCANDRETT and
CHARLES DONNELLY,
Solicitors for Complainants.

(Endorsed:) Filed August 27th, 1910. Henry D. Lang, Clerk.

234 Thereafter and on October 1st, 1910, the following order fixing master's report was filed and entered in said cause, to-wit:

235 United States Circuit Court. District of Minnesota. Third Division.

No. 883.

UNION PACIFIC RAILROAD COMPANY, OREGON SHORT LINE RAILROAD Company, Oregon Railroad & Navigation Company, Southern Pacific Company, Northern Pacific Railroad Company, Great Northern Railroad Company, Chicago, Burlington & Quincy Railroad Company, and Oregon California Railroad Company, complainants,

vs.

INTERSTATE COMMERCE COMMISSION, DEFENDANT.

No. 884.

NORTHERN PACIFIC RAILWAY COMPANY, GREAT NORTHERN RAILWAY Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad & Navigation Company, complainants,

vs.

INTERSTATE COMMERCE COMMISSION, DEFENDANT.

No. 885.

GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC RAILWAY Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad & Navigation Company, and Southern Pacific Company, complainants,

vs.

INTERSTATE COMMERCE COMMISSION, DEFENDANT.

236 By orders of this court made one in each of the above entitled causes, on the 13th day of February, 1909, Frederick N. Dickson, of St. Paul, Minnesota, was appointed special master in chancery, in each of said causes, and empowered and directed to take and report to the court the evidence therein; to examine the same; to make all necessary computations; to find and state the facts in said causes, and to report advisory conclusions of law, and recommend a proper form of decree herein;

And the said master having heard said causes, the same having been tried before him together, and having on the 22nd day of July, 1910, served upon the respective parties to said causes a preliminary report of his conclusions and recommendations therein, and having on the 19th day of August, 1910, heard and considered the exceptions of the respective parties to said causes to said report and recommendations, and having thereafter, on the 27th day of August, 1910, filed his final report of said causes and recommendations therein;

Now, upon consideration, it is ordered that the compensation of said special master for his services in said three causes (including $200.00 expense sustained by him) be, and it is hereby fixed and allowed at, the sum of four thousand ($4,000.00) dollars, to be distributed pro rata between said causes.

Dated this 28th day of September, 1910.

WALTER H. SANBORN,
Circuit Judge.

(Endorsed:) Order fixing master's compensation. Filed October 1st, 1910. Henry D. Lang, clerk.

237 Thereafter, and on October 1st, the following exceptions of defendant to master's final report were filed in said cause, to-wit:

238 In the Circuit Court of the United States for the District of Minnesota. Third Division.

UNION PACIFIC RAILROAD COMPANY, OREGON SHORT Line Railroad Company, Oregon Railroad & Navigation Company, Southern Pacific Railway Company, Northern Pacific Railway Company, Great Southern Railway Company, Chicago, Burlington & Quincy Railroad Company, and Oregon, California Railroad Company, complainants, *vs.* INTERSTATE COMMERCE COMMISSION, DEFENDANT.	No. 883.
NORTHERN PACIFIC RAILWAY COMPANY, GREAT Northern Railway Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad & Navigation Company, complainants, *vs.* INTERSTATE COMMERCE COMMISSION, DEFENDANT.	No. 884.
GREAT NORTHERN RAILWAY COMPANY, NORTHERN Pacific Railway Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad & Navigation Company, and Southern Pacific Company, complainants, *vs.* INTERSTATE COMMERCE COMMISSION, DEFENDANT.	No. 885.

Exceptions of defendant to master's final report.

CHARLES C. HOUPT,
United States Attorney.
LUTHER M. WALTER,
Special Assistant United States Attorney.
J. N. TEAL,
W. A. WIMBISH.
Of Counsel.

Now comes defendant, Inter-state Commerce Commission, by its solicitors, and excepts to the final report of the special master filed herein on the 27th day of August, 1910, upon each and every ground set out in the objections and exceptions of this defendant filed with

the master on the 17th day of August, 1910, set out in Exhibit
239 A accompanying the printed report of the master at pages 73 and 96, both inclusive.

In further support of said exceptions so presented to and filed with the master, thos defendant respectfully submits the following:

(a) Referring to exception No. 3 (pp. 74, 75, of the master's report), the master should have found and declared that the 40-cent rate to St. Paul was established by the Great Northern Railway Company, upon its completion to the coast in 1893, for the purpose of securing traffic and because it was believed and declared by the officials of the said railway company that this rate was reasonable and just and would afford the carrier fair remuneration for the services rendered; and the fact that there was or probably would be an empty east-bound movement of cars was not considered or offered as a reason for making the rate. (Trans., pp. 1274–75.)

The master should have further found that the Northern Pacific Railway Company joined in this rate because it was forced to do so by competition, and not because of the existence of an east-bound empty car movement.

(b) Referring to exception No. 14 (p. 77 of the master's report), the master should have found and declared that while the rate per ten mile for the haul of lumber from coast points to Omaha, under the 50-cent rate, was less than the average rate per ten mile on all traffic of the complainant roads, it afforded full compensation for the service performed, and was not out of line with the rates upon other traffic, in view of the length of haul, the volume of the movement, and the character of the commodity.

(c) Referring to exception 15 (p. 77 of the master's report), the master should have found and declared that Omaha and St. Paul are
240 not on a party as bases for the rates for the haul of lumber from Pacific Coast points; that many years ago the carriers established a differential of 20 cents a hundred pounds as between Omaha and St. Paul because of the greater market competition at St. Paul, which was then the center of a large lumber-producing region; that as this competition relaxed the differential was decreased, until under the tariffs of November 1, 1907, it was made 5 cents a hundred pounds; that the Interstate Commerce Commission in its report and order did not disturb but recognized and retained this differential in the rates prescribed; and that the difference in market competition existing at St. Paul justified the carriers in fixing the differential of 5 cents under Omaha.

The defendant prays that the said exceptions be sustained by the court; that the findings and conclusions of the master excepted to be reversed; and that the original and amended bills of the complainants in said causes be dismissed.

CHARLES C. HOUPT,
United States Attorney.
JOEL M. DICKEY,
Assistant United States Attorney.

(Endorsed:) Defendant's exceptions to master's report. Filed October 1st, 1910. Henry D. Lang, clerk.

241 Thereafter, and on the 15th day of September, 1910, the following record of hearing upon the exceptions was entered of record in said cause, to-wit:

242 United States Circuit Court for the District of Minnesota.
Third Division.

Term minutes: June term. A. D. 1910. September 15, 1910. Thursday morning. Court opened pursuant to adjournment. Present: Hon. Walter H. Sanborn, Hon. Willis Van Deventer, Hon. William C. Hook, circuit judges; Henry D. Lang, clerk.

Union Pacific Ry. Co., Oregon Short Line R. R. Co., Oregon R. R. & Navigation Co., Southern Pacific Co., Northern Pacific Ry. Co., Great Northern Ry. Co., Chicago, Burlington & Quincy R. R. Co., and Oregon & California R. R. Co., complainants, *vs.* The Interstate Commerce Commission, defendant.	No. 883. Equity.
Northern Pacific Ry. Co., Great Northern Ry. Co., Chicago, Burlington & Quincy R. R. Co., Union Pacific R. R. Co., Oregon Short Line R. R. Co., and Oregon R. R. & Navigation Co., complainants, *vs.* The Interstate Commerce Commission, defendant.	No. 884. Equity.
Great Northern Ry. Co., Northern Pacific Ry. Co., Chicago, Burlington & Quincy R. R. Co., Union Pacific R. R. Co., Oregon Short Line R. R. Co., Oregon R. R. & Navigation Co., complainants, *vs.* The Interstate Commerce Commission, defendant.	No. 885. Equity.

This day come the parties to these causes by their respective solicitors, Mr. Hale Holden appearing on behalf of the complainants, and Messrs. Luther M. Walter, J. N. Teal, and W. A. Wimbish appearing on behalf of the defendant, and the said cause having been heretofore by order duly made and entered set down for hearing at this time and place, upon the exceptions of the complainants and
243 defendant to the Special Master in Chancery's Report herein, the same now coming on.

Mr. Hale Holden opens and argues the said exceptions on behalf of the complainants.

Mr. Luther M. Walter opens, stated, and argues the exceptions on behalf of the defendant.

And here the court takes a recess until two o'clock p. m.

The court resumes proceedings at two o'clock p. m.

Mr. Luther M. Walter resumes and concludes his argument upon said exceptions on behalf of the defendant.

Mr. W. A. Wimbish argues upon the said exceptions on behalf of the defendant.

Mr. J. N. Teal argues in conclusion upon said exceptions on behalf of the defendant.

Mr. Hale Holden argues in reply and conclusion upon said exceptions on behalf of the complainants.

And after hearing the arguments and statements of the solicitors for the respective parties hereto upon said exceptions to the special master's report the same are duly submitted to and by the court taken under advisement.

Ordered: That this court do now adjourn until to-morrow morning at ten o'clock.

A true record.

Attest:

HENRY D. LANG, *Clerk.*

244 Thereafter and on October 10th, 1910, the following decision overruling exceptions was filed and entered in said cause, to wit:

245 United States Circuit Court. District of Minnesota. Third Division.

UNION PACIFIC RAILROAD COMPANY, OREGON Short Line Railroad Co., Oregon Railroad and Navigation Co., Southern Pacific Co., Northern Pacific Railway Co., Great Northern Railway Co., Chicago, Burlington & Quincy Railroad Co., and Oregon and California Railroad Company, complainants. *vs.* INTERSTATE COMMERCE COMMISSION, DEFENDANTS.	No. 883. Equity.
NORTHERN PACIFIC RAILWAY CO., GREAT NORTHern Railway Company, Chicago, Burlington & Quincy Railroad Co., Union Pacific Railroad Co., Oregon Short Line Railroad Co., & Oregon Railroad and Navigation Company, complainants, *vs.* INTERSTATE COMMERCE COMMISSION, DEFENDANT.	No. 884. Equity.

GREAT NORTHERN RAILWAY CO., NORTHERN PACIFIC RAILWAY CO., CHICAGO, BURLINGTON & QUINCY RAILROAD CO., UNION PACIFIC RAILROAD CO., OREGON SHORT LINE RAILROAD CO., OREGON RAILROAD AND NAVIGATION CO., AND SOUTHERN PACIFIC CO., complainants,
vs.
INTERSTATE COMMERCE COMMISSION, DEFENDANT. } No. 885. Equity.

All the exceptions to the report of the master must be overruled. Those which challenge his finding that the reduction by the Interstate Commerce Commission on the fifty-cent rate on lumber to St. Paul and other points east of the Pembina Line was arbitrary, so palpably unjust and unreasonable and so discriminatory that it was beyond the power of the commission, are overruled on the ground that this action of the commission was beyond its power or so palpably and gravely unjust and unreasonable as to be beyond the substance if not beyond the form of its power, and upon the authority of Interstate Commerce Com. vs. Ill. Cent. R. R. Co., 30 Sup. Ct. Te., 155; C. M. & St. P. Ry. Co. vs. Minnesota, 134 U. S.,
246 418–452–456–457; Mo., Kansas, Texas R. R. Co. et al. vs. I. C. C. 164 Fed., 645; F. H. Peavey & Co. vs. U. P. Ry. Co., 176 Fed., 409–418–422.

Let orders, therefore, be entered overruling the exceptions to the special master's report, and let the proposed decrees be entered.

(Endorsed:) Decision overruling exceptions and direction. Decrees to be entered. Filed Oct. 10, 1910. Henry D. Lang, clerk.

Thereafter and on the 11th day of October, 1910, the following order overruling exceptions was filed in said cause, to wit:

247 United States Circuit Court for the District of Minnesota.
Third Division.

GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC RAILWAY COMPANY, CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, UNION PACIFIC RAILROAD COMPANY, OREGON SHORT LINE RAILROAD COMPANY, OREGON RAILROAD AND NAVIGATION COMPANY, AND SOUTHERN PACIFIC COMPANY.
vs.
INTERSTATE COMMERCE COMMISSION. } No. 885. Equity.

Whereas an order was duly entered herein on the 30th day of July, A. D. 1910, settin*f* the exceptions of the complainants and defendant to the report of the special master in chancery, and the form of decree recommended and proposed by him, which said report and proposed decree were duly filed herein on the 27th day of August, A. D. 1910, down for hearing on the 15th day of September, A. D.

1910, and the same having been on that day duly heard, argued, and submitted to and by the court taken under advisement.

Now, after due consideration thereof, it is by the court ordered, adjudged, and decreed that all of the exceptions of the complainants and defendant and of each of them be and they hereby are overruled, and it is further ordered that the report of the special master in chancery as filed herein be and the same hereby is in all things approved and confirmed and that the decree recommended by the said special master be and the same hereby is approved and accordingly that the same be entered.

WILLIS VAN DECANTER,
WALTER H. SANBORN,
WILLIAM C. HOOK,
U. S. Circuit Judges.

(Endorsed:) Order overruling exceptions to master's report. Filed Oct. 11, 1910. Henry D. Lang, clerk.

248 Thereafter and on October 13th, 1910, the following decree was filed and entered in said cause, to wit:

249 In the Circuit Court of the United States for the District of Minnesota. Third Division.

No. 885.

GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC RAILWAY Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad & Navigation Company, and Southern Pacific Company, complainants,

vs.

INTERSTATE COMMERCE COMMISSION, DEFENDANT.

This cause came on to be heard at this term and was argued by counsel and thereupon upon consideration thereof, it was ordered, adjudged, and decreed as follows:

That the order of the defendant in that proceeding brought before it entitled Potlatch Lumber Company et al. v. Northern Pacific Railway Company et al., being I. C. C. No. 1348, dated June 2, 1908, as amended July 27, 1908; and the order of the defendant in that proceeding brought before it entitled Pacific Coast Lumber Manufacturers' Association v. Northern Pacific Railway Company et al., being I. C. C. No. 1054, dated June 1, 1908, as amended June 27, 1908, and as further amended September 1, 1908; and the order of the defendant in that proceeding brought before it entitled Western Oregon Lumber Manufacturers' Association et al. v. Southern Pacific Company et al., being I. C. C. No. 1331, dated June 1, 1908; and the order of the defendant in that proceeding brought before it entitled Oregon and Washington Lumber Manufacturers' Association et al.

v. Union Pacific Railroad Company et al., being I. C. C. No. 1327, dated June 2, 1908, as amended July 27, 1908, and as further
250 amended September 1, 1908, and as further amended September 25, 1908; and the order of the defendant in those two proceedings brought before it entitled Pacific Coast Lumber Manufacturers' Association et al. v. Northern Pacific Railway Company et al., being I. C. C. No. 1329, and Southwest Washington Lumber Manufacturers' Association et al. v. Northern Pacific Railway Company et al., being I. C. C. No. 1335, dated June 2, 1908, as amended July 27, 1908, and as further amended September 1, 1908, and as further amended September 25, 1908, in so far as said orders, or any of them, require the complainants herein to cease and desist from enforcing the rates prescribed by complainants' tariff effective November 1, 1907, and to prescribe lower rates than those prescribed by said tariff from points in Washington, Oregon, Idaho, and Montana to points east of a line drawn from Pembina, North Dakota, southward through Grand Forks, North Dakota; Moorhead and Breckenridge, Minnesota; Sioux City and Council Bluffs, Iowa; St. Joseph and Mansas City, Missouri; and thence to Port Arthur, Texas, along the Kansas City Southern Railway, be, and each of them hereby is, set aside and annulled, and the defendant and its members, their agents, servants, and representatives are hereby perpetually enjoined and restrained from enforcing any of said orders in so far as they affect rates to points east of said line.

WALTER H. SANBORN,
WILLIS VAN DEVANTER,
WILLIAM C. HOOK,
United States Circuit Judges.

(Endorsed:) Filed October 13th, 1910. Henry D. Lang, clerk.

251 Thereafter and October 17th, 1910, the following stipulation for costs was filed in said cause, to wit:

252 In the Circuit Court of the United States for the District of Minnesota, Third Division.

No. 883.

UNION PACIFIC RAILROAD COMPANY, OREGON SHORT LINE RAILROAD Company, Oregon Railroad & Navigation Company, Southern Pacific Railway Company, Northern Pacific Railway Company, Great Northern Railway Company, Chicago, Burlington & Quincy Railroad Company, and Oregon and California Railroad Company, complainants,

vs.

INTERSTATE COMMERCE COMMISSION, DEFENDANT.

No. 884.

NORTHERN PACIFIC RAILWAY COMPANY, GREAT NORTHERN RAILWAY Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad & Navigation Company, complainants,

vs.

INTERSTATE COMMERCE COMMISSION.

No. 885.

GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC RAILWAY Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad & Navigation Company, and Southern Pacific Company, complainants,

vs.

INTERSTATE COMMERCE COMMISSION, DEFENDANT.

Stipulation.

It is stipulated that the following items of disbursements made by the complainants in the above-entitled causes were disbursements necessarily made therein and that they may be taxed as costs in favor of said complainants, the amounts named below to be apportioned pro rata between said causes, or, in other words, one-third to each cause:

253

1908.			
Dec.	17.	Paid Henry D. Lang, clerk, U. S. Circuit Court, Saint Paul, for serving chancery subpœna	3.00
1909.			
Nov.	6.	Paid Robt. S. Taylor, Saint Paul, for record of testimony and proceedings	1,413.00
Jan.	18.	Paid Henry D. Lang, clerk, U. S. Circuit Court, Saint Paul, for additional deposit	10.00
1910.			
April	15.	Paid Gunthrop-Warren Printing Company for printing record	2,948.00
Mar.	1.	Paid Henry D. Lang, clerk, U. S. Circuit Court, Saint Paul, for additional deposit	30.00
Aug.	6.	Paid Review Publishing Company, Saint Paul, for printing master's report	50.25
Sept.	3.	Paid Gunthrop-Warren Printing Company for reprint of master's report, with exceptions and rulings thereon	94.50

Oct. 7.	Paid Frederick N. Dickson, special master, compensation for his services as per agreement of parties and order of court	4,000.00
	Total	$8,548.75
	To fees of H. Lee, crier, Chicago, 8 days at $2.50 per day, as per stipulation filed Mar. 11, 1910	20.00
		8,568.76

F. C. DILLARD,
HALE HOLDEN,
CHAS. DONNELLY,
Solicitors for Complainants,
LUTHER M. WALTER,
Solicitor for Defendant.

To amount brought forward	$8,568.75
Deduct therefrom deposits for costs	40.00
	8,628.75
One-third thereof under the stipulation apportioned to this case	2,842.92
To clerk's fees in this cause	21.00
To making chancery final record	101.55
	$2,965.47

Costs taxed at $2,965.47 this 17th day of October, A. D. 1910.
HENRY D. LANG, *Clerk.*

(Endorsed:) Stipulation of or taxation of costs. Filed, October 17th, 1910. Henry D. Lang, clerk.

254 And thereafter on the same day the following judgment for costs was entered of record in said cause, to wit:

255 United States Circuit Court for the District of Minnesota.
Third Division.

Term minutes June term. A. D. 1910. October 17th, 1910.
Monday morning. Court opened pursuant to adjournment.
Present: Hon. Walter H. Sanborn, circuit judge; Hon. Charles A. Willard, judge; Henry D. Lang, clerk.

GREAT NORTHERN RAILWAY COMPANY, NORTHERN Pacific Railway Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad and Navigation Company, and Southern Pacific Company
vs.
THE INTERSTATE COMMERCE COMMISSION.
} No. 885. Equity.

In accordance with the final decree entered herein on the 13th day of October, 1910, and the stipulation of the solicitors for the respective parties hereto this day filed herein, it is by the court ordered, adjudged, and decreed that the Great Northern Railway Company, Northern Pacific Railway Company, Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad and Navigation Company, and Southern Pacific Company, the complainants herein, do have and recover of and from the Interstate Commerce Commission, the defendant herein, their costs and disbursements in this action this day taxed and allowed at the sum of two thousand nine hundred sixty-fice dollars and forty-seven cents ($2,965.47), and that they have execution therefor.

Ordered, That this court do now adjourn until to-morrow morning at ten o'clock.

A true record.

Attest: HENRY D. LANG, *Clerk*.

256 Thereafter and on the same day the following appeal papers were filed in said cause, to-wit: Assignment of errors and prayer for reversal. Petition for appeal. Order allowing appeal. Præcipe for return to U. S. Supreme Court. Original citation and proof of service thereof.

257 In the Circuit Court of United States for the District of Minnesota.

GREAT NORTHERN RAILWAY COMPANY ET AL., complainants, *vs.* INTERSTATE COMMERCE COMMISSION, defendant.	No. 885.

Assignment of Errors.

Now comes the Interstate Commerce Commission, by the Honorable Charles C. Houpt, United States attorney for the District of Minnesota, and Luther M. Walter, special assistant to the United States attorney, and charges that in the order and decree rendered by said Circuit Court for said district in the above-entitled cause on the tenth day of October, 1910, wherein and whereby said court suspended the order of the Interstate Commerce Commission, as therein shown, and restrained and enjoined the enforcement of the same, and in the record and proceedings therein, there is manifest error to its injury, in this, to wit:

1. Said Circuit Court erred in not dismissing the bill and amended bill of complaint for want of equity.

2. Said Circuit Court erred in not dismissing complainants' bill and amended bill for want of jurisdiction.

3. Said Circuit Court erred in holding that the said order of the commission was erroneous and unlawful and beyond the power of the commission to make.

4. Said Circuit Court erred in ordering that said order of the commission be suspended, set aside and held for naught and its attorneys, agents, and employes be restrained and enjoined from enforcing the same.

5. Said Circuit Court erred in suspending, annulling, and holding void said orders of the said commission.

Wherefore the Interstate Commerce Commission prays that
258 the decree of said Circuit Court rendered on the tenth day of October, 1910, be reversed, and that said Circuit Court be ordered to enter a decree dismissing the amended petition or bill of complaint in the above-entitled cause by said complaint against said Interstate Commerce Commission.

CHAS. C. HOUPT,
United States Attorney.
LUTHER M. WALTER,
Special Assistant to the United States Attorney.

(Endorsed:) Assignments of error and prayer for reversal. Filed October 17, 1910. Henry D. Lang, Clerk.

259 In the Circuit Court of United States for the district of Minnesota.

GREAT NORTHERN RAILWAY COMPANY ET AL., complainants, *vs.* INTERSTATE COMMERCE COMMISSION, defendant.	No. 885.

Petition for appeal.

The Interstate Commerce Commission, by Honorable Charles C. Houpt, United States attorney for the district of Minnesota, and Luther M. Walter, special assistant to the said United States attorney, being thereunto duly authorized, represents that in the decree or order of said circuit court, in the above entitled case, rendered on the tenth day of October, 1910, there is manifest error to its injury, and therefore prays for an order granting appeal from said decree to the Supreme Court of the United States.

CHARLES C. HOUPT,
United States Attorney.
LUTHER M. WALTER,
Special Asst. to the United States Attorney.

(Endorsed:) Petition for appeal. Filed October 17, 1910. Henry D. Lang, clerk.

260 In the Circuit Court of the United States for the district of Minnesota.

GREAT NORTHERN RAILWAY COMPANY ET AL., complainants.
vs. No. 885.
INTERSTATE COMMERCE COMMISSION, defendant.

Order allowing appeal.

In this cause, the Interstate Commerce Commission by the Honorable Charles C. Houpt, United States attorney for the district of Minnesota, and Luther M. Walter, special assistant to the said United States attorney, thereunto duly authorized, having made its application in writing for an appeal from the decree therein, rendered on the tenth day of October, 1910, to the Supreme Court of the United States, and it appearing that the matter in dispute in said cause exceeds the sum of $2,000.00, exclusive of costs, it is therefore ordered that said appeal be, and the same is hereby, granted and made returnable on the 11th day of November, 1910.

WALTER H. SANBORN,
Circuit Judge.

(Endorsed:) Order allowing appeal. Filed October 17, 1910. Henry D. Lang, clerk.

261 Circuit Court of the United States, District of Minnesota. Third Division.

GREAT NORTHERN RAILWAY COMPANY ET AL., complainant,
vs.
INTERSTATE COMMERCE COMMISSION, DEFENDANT. } No. 885.

To the clerk of the above named court:

Please make a return upon the appeal to the United States Supreme Court, and include therein all the files and records in this cause.

Dated St. Paul, Minnesota, Charles C. Houpt.

CHAS C. HOUPT,
U. S. Atty.
LUTHER M. WALTER,
Atty., Complainants' Solicitors.

(Endorsed:) Praecipe for Return. Filed October 17, 1910. Henry D. Lang, clerk.

262 United States of America. Circuit Court. Eighth Circuit.

Citation.

United States of America. To Great Northern Railway Company et al., greeting:

You are hereby cited and admonished to be and appear in the United States Supreme Court at the Capitol in the city of Washington, D. C., thirty days from and after the date this citation bears date, pursuant to an appeal filed in the clerk's office of the U. S. Circuit Court for the district of Minnesota, third division, wherein the Interstate Commerce Commission is appellant and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant, as in said petition mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the Honorable Walter H. Sanborn, judge of said court, this 17th day of October, A. D. 1910.

WALTER H. SANBORN,
Judge of said Court.

Due service of the foregoing citation by copy at St. Paul, Minnesota, is hereby admitted this 17th day of October, A. D. 1910.

F. C. DILLARD,
HALE HOLDEN,
CHARLES DONNELLY,
Solicitor for Appellees.

263 (Endorsed:) Entered 885, Eq. No. 885 Equity.
United States Circuit Court, district of Minnesota. Third division. Great Northern Railway Co. vs. The Interstate Commerce Commission, defendant. Citation.
Filed Oct. 17, 1910. Henry D. Lang, clerk.

264 Thereafter and on the same day the following stipulation as to record upon appeal was filed in said cause, to wit:

265 In the Circuit Court of the United States for the District of Minnesota.

NORTHERN PACIFIC RAILWAY COMPANY, ET AL., complainant, *vs.* THE INTERSTATE COMMERCE COMMISSION, defendant.	No. 884. Equity.
GREAT NORTHERN RAILWAY COMPANY, complainant, *vs.* THE INTERSTATE COMMERCE COMMISSION, defendant.	No. 885. Equity.

It is stipulated and agreed by and between the parties hereto that the clerk of this court, in preparing the records for transmission to

the Supreme Court of the United States, shall not include the record in each of these two cases, it being in each case a duplicate of that being set forward in the case of the Union Pacific Railway Company et al. versus The Interstate Commerce Commission, No. 883. The Supreme Court in passing upon the appeal in each of the said cases may use the record in Number 883 as the record in all three of said cases.

F. C. DILLARD,
Solicitor for Complainant.
HALE HOLDEN,
Solicitor for Complainant.
CHARLES DONNELLY,
Solicitor for Complainant.
CHARLES C. HOUPT,
Solicitor for Defendant.
LUTHER M. WALTER,
Solicitor for Defendant.

(Endorsed:) Stipulation as to record upon appeal. Filed October 17, 1910. Henry D. Lang, clerk.

266 United States of America. Circuit Court of the United States—District of Minnesota. Third Division.

I, Henry D. Lang, clerk of said Circuit Court, do hereby certify and return to the honorable, the Supreme Court of the United States, that the foregoing, consisting of 266 pages, numbered consecutively from 1 to 266, inclusive, is a true and complete transcript of the records, process, pleadings, orders, final decree, and all other proceedings in said cause except the original bill of complaint, and of the whole thereof, as appears from the original records and files of said court; and I do further certify and return that I have annexed to said transcript and included within said paging the original citation, together with the proof of service thereof.

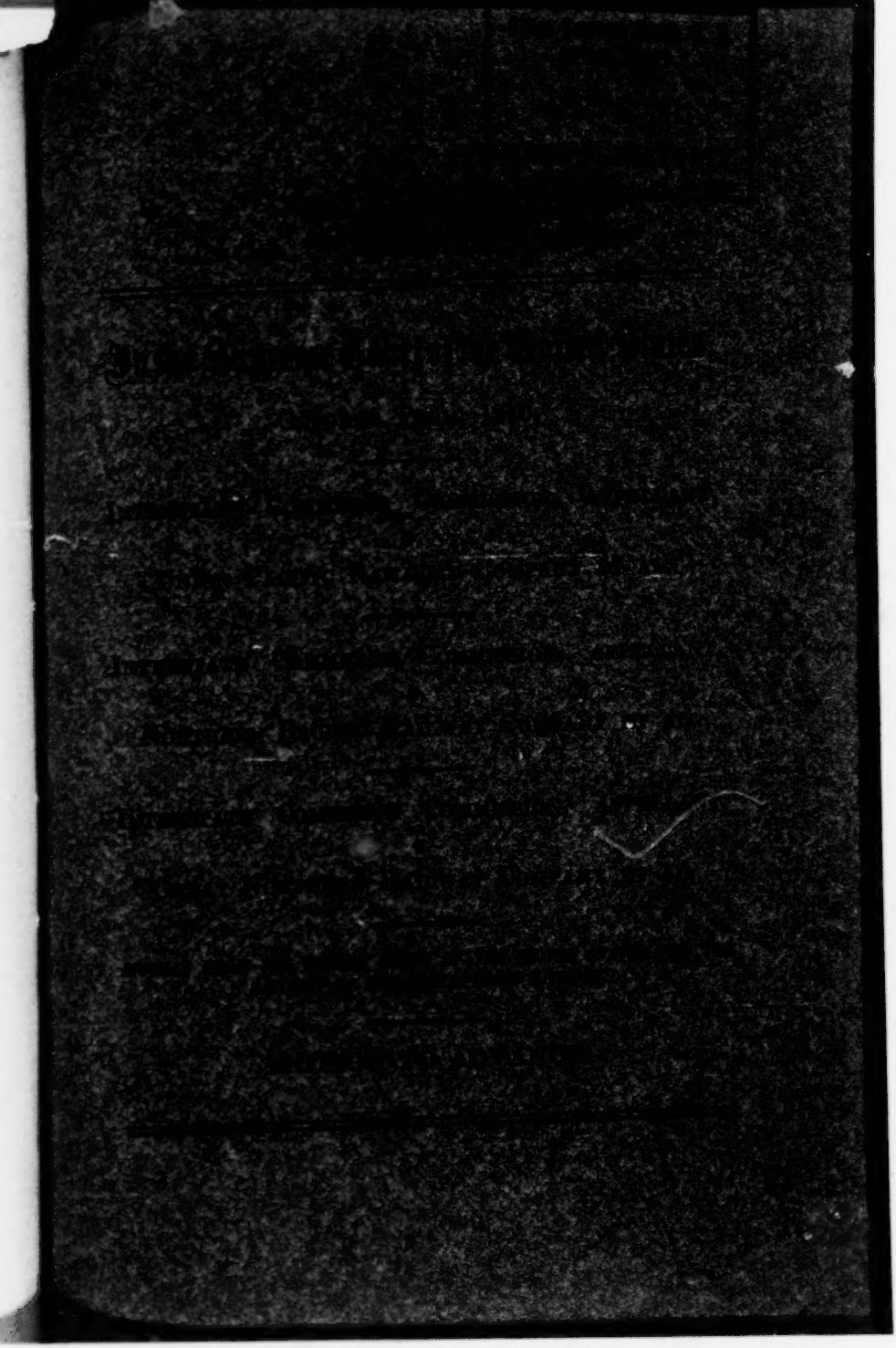
In witness whereof I have hereunto set my hand and affixed the seal of said court, at Saint Paul, in the District of Minnesota, this 28th day of October, A. D. 1910.

[SEAL.]

HENRY D. LANG, *Clerk.*
By LOUISE B. TROTT, *Deputy.*

(Indorsement on cover:) File No. 22,425. Minnesota. C. C. U. S. Term No. 453. The Interstate Commerce Commission, appellant, *vs.* Great Northern Railroad Company et al. Filed November 30th, 1910. File No. 22,425.

○



In the Supreme Court of the United States.

OCTOBER TERM, 1910.

INTERSTATE COMMERCE COMMISSION, appellant, *v.* UNION PACIFIC RAILROAD COMPANY ET AL.	No. 802.
INTERSTATE COMMERCE COMMISSION, appellant, *v.* NORTHERN PACIFIC RAILWAY COMPANY et al.	No. 803.
INTERSTATE COMMERCE COMMISSION, appellant, *v.* GREAT NORTHERN RAILWAY COMPANY et al.	No. 804.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA, THIRD DIVISION.

MOTION TO ADVANCE.

On behalf of the Interstate Commerce Commission, appellant, the Solicitor General respectfully moves the court to advance the above-entitled causes for hearing during the October term, 1911, for the following reasons:

1. These are appeals by the Interstate Commerce Commission from final decrees of the Circuit Court

of the United States for the District of Minnesota, third division, in three suits instituted in said court by the carriers above named and certain other carriers under the provisions of section 16 of the act to regulate commerce as amended, enjoining enforcement of orders of said commission requiring said carriers to cease and desist from maintaining and collecting their present rates for the transportation of lumber in carloads from points in the Northwest to various markets of consumption east thereof, and to establish and put in force and apply to such transportation, as maxima, in lieu of said rates, certain other rates prescribed in said orders.

2. The act to regulate commerce, approved February 4, 1887, as amended June 29, 1906, in section 16, makes the provisions of "An act to expedite the hearing and determination of suits in equity," etc., approved February 11, 1903, applicable to all such suits, and said section provides that cases of this character shall have in this court "priority in hearing and determination over all other causes except criminal causes."

Notice of this motion has been served on opposing counsel.

FREDERICK W. LEHMANN,
Solicitor General.

APRIL, 1911.

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In the Supreme Court of the United States.

OCTOBER TERM, 1911.

THE INTERSTATE COMMERCE COMMISSION, APPELLANT, *v.* UNION PACIFIC RAILROAD COMPANY ET AL.	No. 451.
THE INTERSTATE COMMERCE COMMISSION, APPELLANT, *v.* NORTHERN PACIFIC RAILWAY COMPANY ET AL.	No. 452.
THE INTERSTATE COMMERCE COMMISSION, APPELLANT, *v.* GREAT NORTHERN RAILWAY COMPANY ET AL.	No. 453.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

BRIEF FOR THE INTERSTATE COMMERCE COMMISSION, APPELLANT.

STATEMENT.

These cases come here on appeal from decrees of the United States Circuit Court for the District of

Minnesota enjoining, in part, orders of the Interstate Commerce Commission prescribing rates upon lumber and lumber products for the transportation thereof from the Pacific coast and points east thereof in the intermountain region to points in States east thereof, including St. Paul, Omaha, and Chicago. The orders of the commission were issued on June 1 and 2, 1908, as a result of four separate complaints. The carriers, appellees herein, complied with the orders of the commission, and the rates therein prescribed have been continuously in effect. Bills of complaint were filed a few days prior to the effective date of the orders, but no preliminary injunction was prayed for.

A special master was appointed and after a hearing he recommended decrees enjoining, in part, the rates prescribed by the commission, and this report of the master was approved by the Circuit Court for the Eighth Circuit sitting en banc. It is to reverse these decrees that these appeals have been taken.

STATEMENT OF FACTS.

For many years prior to November 1, 1907, the Northern Pacific Railway Company, the Great Northern Railway Company, and the Union Pacific Railroad Company, with their connections, had maintained rates upon lumber and other forest products from the Pacific coast and intermountain regions to points east thereof. There are three well-defined lumber producing regions, the rates

from which are involved in this case: First, the Pacific coast region, extending from the summit of the Cascade Mountains to the coast; second, the Spokane region, extending from the summit of the Rocky Mountains westward to the summit of the Cascades; third, the Montana-Oregon territory covering the eastern slope of the Rocky Mountains. The basic rates are those from the Pacific coast region, the other two regions taking differential rates thereunder. For the purpose of this case it will be sufficient to discuss the Pacific coast rates only. As fir is the principal lumber transported, we shall treat only of the fir rate.

As a fair illustration of the rates established many years prior to November 1, 1907, the following rates are given, in cents, per 100 pounds:

Pacific coast to St. Paul, 40 cents; Pacific coast to Omaha, 50 cents; Pacific coast to Chicago, 50 cents.

These rates remained in effect until November 1, 1907, when they were increased by the carriers as follows:

To St. Paul, 50 cents; to Omaha, 55 cents; to Chicago, 60 cents.

Prior to the effective date of these advanced rates, their collection was enjoined by the circuit courts in Oregon and Washington, which decrees were affirmed on appeal. (*Northern Pacific Railway Co.* v. *Pacific Coast, etc., Association*, 165 Fed., 1; *Union Pacific Co.* v. *Oregon, etc., Association*,

ib., 13.) The result was that the old rates were applied until the decision of the commission, so that the revenues of the carriers between November 1, 1907, and October 15, 1908, were not affected by these advanced rates.

On complaints by various lumber shippers and lumber organizations, and after a thorough investigation in four cases, the Interstate Commerce Commission in three separate reports and opinions held that the advanced rates complained of were unjust and unreasonable, and prescribed maximum rates for the future. The commission restored the old rates to all points on and west of a line drawn from Pembina, North Dakota, to Port Arthur, Texas, this line being practically the western border of Minnesota, Iowa, Missouri, Arkansas, and Louisiana, and an advance was allowed to all points east of this line of 5 cents per 100 pounds.

The rates prescribed by the commission to the illustrative points were:

To St. Paul, 45 cents; to Omaha, 50 cents; to Chicago, 55 cents.

These orders were to become effective October 15, 1908.

The record in each of the three appeals is practically the same, but there is a slight difference in the territory covered. Appeal 451 involves an order of the commission in its docket 1327; appeal 452 involves an order prescribed in dockets 1329 and 1335. These two cases involve rates from the Pacific coast. Appeal 453 involves rates prescribed by the commission in its docket 1348, and

involves rates from the Spokane territory to the east. Unless otherwise stated, the record herein referred to is that in appeal No. 451.

The commission was not unanimous in the reports and orders issued, Chairman Knapp and Commissioner Harlan dissenting in each of the three opinions.

The carriers in their bills of complaint attacked the orders of the commission on the following grounds, among others:

1. That the interstate commerce acts were unconstitutional.

2. That the carriers' rates were just and reasonable, and those fixed in their stead by the commission were unreasonably low.

It was alleged that the loss in revenue due to the commission's orders would exceed $700,000 per year.

The commission demurred to that part of the bill attacking the validity of the statutes (33) and answered the remainder (35). The answer denied the material allegations of the bill, and specifically that the carrier's rates were reasonable and that those fixed by the commission were unjust and unreasonable; on the contrary it averred that the evidence introduced before the commission showed that the advanced rates were unjust and unreasonable, and that the commission, upon a consideration of all the evidence, so decided, and fixed just and reasonable rates in their stead.

The several reports of the commission are attached as exhibits to the answer (44), and will also be found in 14 Inter. Com. Com. Rep. 1 et seq.

Issue being joined on the answers (67), the cases were on February 15, 1909, referred to a special master to report the evidence to the court, to find the facts, and to report advisory conclusions of law and recommend a form of decree (68).

The evidence before the commission was stipulated into the record before the master.

In addition, much testimony was taken by the carriers dealing with the cost of reproducing the Great Northern and Northern Pacific systems; no such testimony was offered as to the Union Pacific system. As to this testimony, it is sufficient here to say that the total cost of reproducing the Northern Pacific Railway was fixed at $682,193,601.68 (Rec., vol. 1, p. 117), which was substantially $185,000,000 more than the cost of reproducing the road as given by the same witnesses in the Spokane case before the commission a year earlier. The cost of reproducing the Great Northern Railway was fixed at $549,253,317, which was just $100,000,000 more than the cost fixed by the same witnesses in the Spokane case.

Upon the conclusion of the testimony the master filed a lengthy and elaborate report in which he found as a fact that the carriers were, and had been, prosperous, had earned fairly satisfactory net incomes, that the rates established by the commission were not confiscatory, and that the rates to points west of the Pembina-Port Arthur line were in no way subject to criticism.

He thereupon held as a matter of law that while a rate might be unassailable on constitutional grounds and absolutely free from confiscatory features, yet it might "in and of itself be so inherently vicious, unfair, and unjust as to manifest a gross and arbitrary disregard of the entire spirit and intent of the interstate commerce act," (Rec. 103) in which event the courts would have jurisdiction to enjoin the order fixing such rates.

He then held that if the rate of 50 cents to Omaha as fixed by the commission was reasonable, the rates of 45 cents to St. Paul, and of 55 cents to Chicago, were so grossly unjust and unreasonable and so inherently vicious as to be an arbitrary and palpable disregard and perversion, not only of the spirit and intent of the law, but of its very terms forbidding discrimination against localities.

This proposition is one which had not occurred to the carriers during the entire history of the rates in question, for this differential established by the commission was only half that which the carriers themselves had maintained for fourteen years. Naturally, the carriers nowhere in their pleadings averred that this differential was discriminatory, nor did they give any evidence addressed to establishing that fact. Nevertheless, the master, solely upon this ground, found that the commission's rates to all points east of the Pembina-Port Arthur line were so discriminatory as to be beyond the very power of the commission to make, and he accord-

ingly recommended that that portion of the commission's orders be enjoined.

Exceptions to this report filed by the commission were overruled by the court below, which, in a very brief memorandum, adopted the master's view that this differential was so palpably and grossly unjust and unreasonable as to be beyond the substance of the power of the commission, and signed decrees in accordance with the master's recommendation.

ASSIGNMENT OF ERRORS.

The court below erred:

1. In holding that the orders of the commission were erroneous, unreasonable, and beyond the power of the commission to make.

2. In holding that the said orders were beyond the commission's power for the reason that the commission fixed a lower rate to St. Paul than to Omaha.

ARGUMENT.

While a number of questions were raised in the court below, the cases were decided upon a single proposition.

The constitutionality of the interstate commerce acts was not argued before the master and was not touched upon by the Circuit Court. It has been so fully sustained by this court that citation of the decisions even is not necessary.

Nor is a consideration of the vast quantity of evidence offered by the carriers as to the reproduc-

tive value of the Northern Pacific and Great Northern systems helpful. Avowedly it was not offered for the purpose of showing confiscation, or that the rates were unreasonable. (Rec., vol. 1, pp. 15, 16.) Nor, according to the testimony of the railroad officials themselves, was it ever considered by them in fixing rates. (President Elliott, vol. 2, p. 641.)

And in the opinion of the master its bearing upon the questions before him was so remote as to render it useless for him to attempt to weigh the testimony and determine the present actual value of the systems. (Vol. A, p. 93.)

Nor is there anything in the contention that the commission exceeded its jurisdiction because the carriers' rates were reasonable and those fixed by the commission in their stead were unreasonably low.

Under section 15 of the Hepburn Act, whenever the commission shall be of the opinion that the carriers' rates are unreasonable, it is their duty to fix reasonable rates. Whether those rates so fixed by the commission are, as between the carrier and shipper, fair and reasonable—that is whether the court upon the same testimony would have fixed the same rates—is not the question. (*Reagan* v. *Farmers' L. & T. Co.*, 154 U. S., 362.)

The rates must stand unless the court can say that they are confiscatory or that it was impossible for a fair-minded board to have established them.

(*San Diego Land & Town Co.* v. *Jasper*, 189 U. S., 439.)

These cases were decided by the master and the Circuit Court upon a single proposition—one which was not presented by the pleadings, it is true, but upon which we are entirely content to rest the case. Without further consideration, therefore, of the other questions presented below, we shall address ourselves to showing that—

THE ACTION OF THE COMMISSION IN FIXING A LESS RATE TO ST. PAUL THAN TO OMAHA WAS NEITHER ARBITRARY, UNREASONABLE, NOR IN VIOLATION OF THE STATUTE.

The action of the master which the court confirmed in this case is based squarely upon his finding that the rate to Omaha is the measure of the reasonable rate which should exist to St. Paul. That there may be no mistake about the position which the master took in this case, we quote from his report. (Rec., 103.)

> A rate may be unassailable on constitutional grounds, may be absolutely free from confiscatory features, and yet in and of itself be so inherently vicious, unfair, and unjust as to manifest a gross and arbitrary disregard of the entire spirit and intent of the interstate-commerce act.
>
> A law passed in the interests of and to promote justness and reasonableness may not be used to perpetrate injustice and unreasonableness any more than the statute of frauds

can be used as an instrument to perpetrate fraud.

For this reason there does inhere in the Federal courts of equity power to review rates made by the commission above and beyond constitutional questions and questions as to the technical limits of delegated power, and to inquire whether or not the delegated power has been exercised in a just and reasonable manner, and wthin the true spirit and intent of the law, and to relieve from such orders as, though not technically confiscatory or discriminatory and not technically beyond the terms of the statute, are nevertheless so inherently inconsistent, unjust, unreasonable, and violative of common right as to be on their face unjust and unreasonable orders in the common sense of the terms. * * *

In restoring the superseded rates to the Pembina-Port Arthur line, including the old 50-cent rate over the Union Pacific system to Omaha, the commission has necessarily found and determined that the 50-cent rate to Omaha and Missouri River points was and is a just and reasonable rate, and the court has a right to take them at their own opinion on this point.

If it be true that a 50-cent rate to Omaha is a just and reasonable rate (and the commission has so found), then it must inevitably follow that the rate of 45 cents to St. Paul and 55 cents to Chicago are unjust and unreasonable rates.

The difficulties and expenses of transportation over the Union Pacific line and the northern lines are fairly equal. The route over the northern lines to St. Paul is longer. But St. Paul and Omaha have always been considered by the commission and by rate-making experts as on a parity as bases of rates.

The rate of 10 cents to Chicago from St. Paul is conceded to be an unusually low rate, and is conceded by the commission to be just and reasonable.

If, then, 50 cents to Omaha is just and reasonable, 45 cents to St. Paul must be grossly unjust and unreasonable, strongly tending toward confiscation of property of the northern lines, strongly tending toward unjust discrimination against the northern lines and in favor of the Union Pacific, and strongly tending to unduly prefer the territory served by the northern lines over that served by the Union Pacific, and in all these features to be a gross, arbitrary, and palpable disregard and perversion, not only of the spirit and intent of the law, but of the very terms of the law itself wherein it forbids unjust discrimination against carriers and localities and undue preferences to carriers and localities.

It will be said that the 45-cent rate, though confessedly less than that which is just and reasonable as found by the commission, is nevertheless not sufficiently so in its relation to the whole body of net returns to result in confiscation. This is probably true. There

> is no evidence to show whether it is or not. But on the commission's own basis it is 10 per cent less than what the commission themselves have determined to be just and reasonable, and in itself is so inconsistent with and violative of the fundamental principles of rational justice, so incompatible with the commission's own expressed notions of what is just and reasonable as to manifest and evince upon its face an arbitrary violation of the spirit and intent of the law and an arbitrary disregard of the fundamental principles of the interstate commerce act out of which their powers grow and in accordance with which their powers must be exercised. (Rec., 104, 105.)

In overruling defendant's exceptions to the master's report the court said:

> All the exceptions to the report of the master must be overruled. Those which challenge his finding that the reduction by the Interstate Commerce Commission on the fifty-cent rate on lumber to St. Paul and other points east of the Pembina line was arbitrary, so palpably unjust and unreasonable, and so discriminatory that it was beyond the power of the commission, are overruled on the ground that this action of the commission was beyond its power, or so palpably and gravely unjust and unreasonable as to be beyond the substance, if not beyond the form, of its power. (Rec., 148.)

1. *In this decision the court and master invaded the very province of the commission.*

Whether a particular rate is reasonable or a particular discrimination is unjust is a question of fact. (*I. C. C.* v. *Alabama Midland Railway Co.*, 168 U. S.; *Import Rate Case*, 162 U. S., 197.)

Matters of fact are within the exclusive competency of the commission, and its decision thereon is final. (*Illinois Central Railroad* v. *I. C. C.*, 215 U. S., 452; *B. & O. Railroad Co.* v. *Pitcairn Railway*, Ib. 481; *Southern Pacific Co.* v. *I. C. C.*, 219 U. S., 433; *I. C. C.* v. *Del., L. & W. R. R. Co.*, 220 U. S., 235.)

In determining such questions, the commission should consider any fact proper to be considered by the carrier in fixing the rate. Said this court in *Texas & P. R. Co.* v. *I. C. C.* (162 U. S., 197, 219):

> The very terms of the statute that charges must be reasonable, that discrimination must not be unjust, and that preference or advantage to any particular person, firm, corporation, or locality must not be undue or unreasonable necessarily imply that strict uniformity is not to be enforced; but that all circumstances and conditions which reasonable men would regard as affecting the welfare of the carrying companies, and of the producers, shippers, and consumers, should be considered by a tribual appointed to carry into effect and enforce the provisions of the act. * * * To answer such questions in any case coming before the commission requires an investiga-

> tion into the facts; and we think that Congress must have intended that whatever would be regarded by common carriers, apart from the operation of the statute, as matters which warranted differences in charges, ought to be considered in forming a judgment whether such differences were or were not "unjust." Some charges might be unjust to shippers, others might be unjust to the carriers. The rights and interests of both must, under the terms of the act, be regarded by the commission.

The presumption is that the action of the commission was correct (*Chicago, Milwaukee, etc., Ry. Co.* v. *Tompkins,* 176 U. S., 167), and the court will not interefere unless it is impossible to say that a fair-minded commission could not have reached that conclusion. (*San Diego Land & Town Co.* v. *Jasper,* 189 U. S., 439.)

The commission had jurisdiction in these cases; concededly all the formalities of the statute were observed. This court well knows that the making of a rate involves the exercise of judgment or discretion. Mr. Munroe, the experienced freight traffic manager of the Union Pacific, testified as to this as follows (Rec., 333):

> Q. Now, the making of a freight rate is largely a matter of judgment, isn't it?
>
> A. It is.
>
> Q. A matter of opinion?
>
> A. Yes.

> Q. There is no method by which you can determine by any mathematical system, any accurate system, what a rate should be to be just to the public and to the carrier and to all concerned?
>
> A. There is no fixed rule.

In its determination the commission exercised its judgment and discretion upon all the facts in the record, both oral testimony and exhibits. It likewise had before it, by virtue of the provisions of the statute, the annual reports of the various carriers showing their revenues, cost of operation, and kindred questions, making in short a complete exposition of the statistical and financial data in minute detail of the carriers. In addition it had in its files, and examined in this case, the lumber rates of various carriers in the United States for the purposes of comparison. (Rec., 780.) Not only all this information, but the result of its years of experience in cases of this sort was always present in passing upon the questions involved.

It is clear that the master, in reaching a conclusion different from that of the commission and finding that a reasonable rate to St. Paul should be at least 50 cents, invaded the powers of the commission.

This action of the master was a plain departure from the principle announced by this court in the Reagan case (154 U. S., 362, 397), as follows:

> This body of rates, as a whole, is challenged by the plaintiff as unreasonable, un-

> just, and working a destruction of its rights of property. * * * The courts are not authorized to revise or change the body of rates imposed by a legislature or a commission; they do not determine whether one rate is preferable to another or what under all circumstances would be fair and reasonable as between the carriers and the shippers; they do not engage in any mere administrative work; but still there can be no doubt of their power and duty to inquire whether a body of rates prescribed by a legislature or a commission is unjust and unreasonable and such as to work a practical destruction to rights of property, and, if found so to be, to restrain its operation.

2. *Even if it were open to the court to examine the rates independently, it can not be said that the commission was arbitrary in fixing a lower rate to St. Paul than to Omaha.*

A. The differential of 5 cents between the rate to St. Paul and to Omaha was established by the carriers of their own volition in the tariffs of November 1, 1907.

B. By the master's own standard the rate of 45 cents to St. Paul is reasonable.

C. The circumstances and conditions of transportation to St. Paul and Omaha are not substantially similar.

A. The differential prescribed by the commission in its order was established by the carriers themselves.

In 1894 the rate established to Omaha on fir lumber was 60 cents. At the same time the rate to St. Paul was 40 cents. This differential of 20 cents remained until 1899, when the rate to Omaha was reduced to 50 cents, but this rate was again increased to 60 cents in 1900, and was again reduced to 50 cents in 1901. From that date until November 1, 1907, the 10-cent differential was applied. It should not be forgotten that during all this time the Northern Pacific and the Great Northern, in connection with the Chicago, Burlington and Quincy Ry. (the latter line being owned jointly by the former two railways) maintained the rate to Omaha 10 cents in excess of the St. Paul rate. If there was any discrimination as between St. Paul and Omaha, that discrimination was maintained by the Northern lines.

While the tariff of November 1, 1907, fixed the differential at 5 cents, it must not be forgotten that the injunction of the Circuit Courts of Washington and Oregon prevented this differential from becoming effective until the order by the commission in this case, which became effective October 15, 1908. While the order of the commission fixed this differential at 5 cents, it is 5 cents less than what existed within 15 years prior to the making of the order, yet the master finds that because the commission did not remove entirely the differential

between St. Paul and Omaha, the commission acted so arbitrarily, and so in defiance of what was just and reasonable, as to transcend the limits of its power under the act to regulate commerce.

Will this court affirm the proposition that the adoption of a differential, which is one-half of that maintained by the carriers, is so palpably unreasonable and arbitrary as to be beyond the power of the commission under the act to regulate commerce?

B. By the master's own standard the rate of 45 cents to St. Paul is reasonable.

The master sustained as reasonable all the rates prescribed by the commission west of the Pembina-Port Arthur line; in other words, the rates on and west of the western boundary of Minnesota of 40 cents were, by the master, said to be just and reasonable. Under the commission's order the 45-cent rate was to be reached a short distance east of the western State line of Minnesota. The carriers graded up the rate from 40 cents at Grand Forks, Fargo, Moorhead, Breckenridge, and Wahpeton until by successive rates of 41, 42, 43, and 44 cents, the maximum of 45 cents was reached on the Great Northern at McHugh, 50 miles east of the Pembina-Port Arthur line, and on the Northern Pacific at Fosston, 71 miles, and at Benson, 52 miles east of the Pembina-Port Arthur line.

If the rate to Grand Forks, Fargo, Moorhead, Breckenridge, and Wahpeton of 40 cents, is a reasonable rate, and the master has so found, then

it must inevitably follow that 5 cents additional for only a haul of from 50 miles to 71 miles, making a through rate of 45 cents, a just and reasonable rate. Undoubtedly, the circumstances and conditions on the Great Northern and Northern Pacific west of the Pembina-Port Arthur line, involving the mountain haul, were not more favorable to a given rate per ton per mile than that portion of these two lines lying east of the Pembina-Port Arthur line in the State of Minnesota. It is only 215 miles from Wahpeton via the Great Northern to St. Paul and only 250 miles from Fargo to St. Paul via the Northern Pacific.

Measured from any standpoint, by any method of reasoning, if the master's rate of 40 cents to Fargo and other points on the Pembina-Port Arthur line, is a just and reasonable rate, then 45 cents to the various Minnesota points lying between McHugh, Fosston, and Benson on the west and St. Paul and Duluth on the east, is certainly a just and reasonable rate. It is but the extension of the same scale of rates east of the Pembina-Port Arthur line which the master and the commission have fixed west of that line.

C. The circumstances and conditions of transportation to St. Paul and Omaha are not substantially the same.

This court has held that he who seeks to overthrow an order of the commission assumes the burden of showing every material element necessary to establish the unlawfulness of the commission's

order. Applying that principle to this case, it would appear that the carriers must show the similarity of conditions and circumstances surrounding the transportation of fir lumber to St. Paul, as compared with the transportation to Omaha.

The master finds that the conditions and circumstances surrounding the transportation between these two points are substantially similar. This court will examine the record in vain to find any allegation in the pleadings or facts in the evidence upon which such a finding can be made. On the contrary, the facts that do appear of record, meager as they are, show a total dissimilarity, with an attendant additional cost of transportation to Omaha over the Union Pacific line, as compared with the transportation over the Northern lines to St. Paul.

For example, the evidence shows that the highest altitude reached on the Northern Pacific is 2,335 feet, and on the Great Northern is 2,091 feet less than the highest altitude reached via the Union Pacific.

President Elliot of the Northern Pacific testified before the Interstate Commerce Commission in this case. (Rec., 1372.) He qualified as an engineer and filed, in the record, profiles of the Northern Pacific and Great Northern Railways, compared with the profiles of the Illinois Central from McComb, Mississippi, to Chicago, Illinois. He testified that the resistance which must be over-

come in order to move a ton on a level railroad is 6 pounds; that when the same ton is lifted up a one per cent grade, it requires an additional 20 pounds, or a total of 26 pounds. He further testified that the Northern Pacific from Tacoma to St. Paul, 1,909 miles, was compelled before reaching St. Paul with a loaded car to lift the same 15,493 feet; that figuring the resistance which those grades would offer for transportation, it was equivalent to 1,338 miles at one per cent grade.

On the Great Northern Railroad, a mileage of 1,821 miles, the total lift required to reach St. Paul was 12,459 feet; that this lift was equivalent to a one per cent grade on 1,363 miles. It does not appear in this record what is the profile of the Union Pacific and its connecting lines from Portland through to Omaha. Without this profile or equivalent evidence it is absolutely impossible to make any comparison similar to that which Mr. Elliot made with the Illinois Central. Comparisons in order to be absolutely correct must be based upon the same elementary facts. Such a comparison we can not make as between the Union Pacific and the two Northern lines. But assuming that for an equal elevation the total lift of the loaded car is the same via the Union Pacific as via the Northern Pacific, we can have some light thrown upon the relation of cost. If the Northern Pacific, with a highest elevation at any one point of 5,665 feet, must lift the loaded car 15,493 feet over a one per

cent grade of 1,338 miles to reach St. Paul, then over the Union Pacific it would be necessary to lift the car 2,335 feet higher, or a total of 17,821 feet, on the basis of 1,338 miles one per cent grade on the Northern Pacific. The increased lift on the Union Pacific would represent 1,539 miles of one per cent grade, an increase of 201 miles, considerably in excess of ten per cent of the one per cent mileage via the Northern Pacific.

A similar comparison between the Union Pacific and Great Northern Railways upon the same assumption gives the following result: Via the Union Pacific the loaded car must be lifted 2,091 feet higher, or a total of 14,550 feet. If in lifting the loaded car on the Great Northern 12,459 feet it is necessary to haul the loaded car over 1,353 miles of one per cent grade, then on the same basis via the Union Pacific for a total lift of 14,550 feet it will be found that the total haul on the one per cent grade is 1,592 miles, or considerably in excess of ten per cent over the Great Northern haul.

Taking another basis of comparison used by Mr. Elliot, we find a still greater difference between the Northern Lines and the Union Pacific in the power necessary to get the same loaded car to St. Paul over the Northern Lines and a similar car over the Union Pacific line to Omaha. We have already seen that in his evidence Mr. Elliot fixed the resistance to be overcome on a one per cent grade at twenty-six (26) pounds. Taking this resistance

and applying it to the 1,338 miles of one per cent grade, we obtain a total resistance of 34,668 pounds on the Northern Pacific as against the total resistance on the Union Pacific of 40,014 pounds.

A similar comparison between the Great Northern and Union Pacific shows a total resistance on the Great Northern of 35,438 pounds as against 41,392 on the Union Pacific.

By any comparison which can be made from the figures of Mr. Elliot, it appears that there is much more than a ten per cent difference between the service to be performed in reaching Omaha and in reaching St. Paul.

Another pertinent fact which should be borne in mind in this connection is this: When the lumber is carried over either the Great Northern or Northern Pacific from the Pacific coast to St. Paul, it is carried over a single line. When the lumber is carried to Omaha over the Union Pacific and its connections, it is carried over not less than three lines and in nearly all instances four lines. All rate-making commissions recognize generally that where traffic is hauled over two lines or more the rate may very properly be in excess of what would be proper for the same mileage when hauled by one carrier only. For example, the State of Texas on first-class traffic has established mileage rates, when two carriers transport the traffic, 8 cents higher per hundred pounds than would be charged by one carrier over the same total mileage.

There is no single-line competition to Omaha. There is to St. Paul.

Again, taking the basis of difference suggested by Mr. Woodworth in his reply to the question of Mr. Wimbish (Rec., 1472) as to why he made a rate of 40 cents to St. Paul as against 50 cents to Omaha, we find this condition: The Northern Pacific hauls in the same train a car of lumber from Tacoma to Billings destined for St. Paul and a car destined to Omaha. After these cars reach Billings the expensive haul has been performed.

It appears from Mr. Woodworth's testimony that the Northern Pacific, having hauled the car from Tacoma to Billings, 1,015 miles, and the Chicago, Burlington & Quincy from Billings to Omaha, 897 miles, out of a total haul of 1,912 miles, the revenue was divided between these two lines according to the mileage. This division gives the Northern Pacific 26.35 cents from Tacoma to Billings and the Burlington 23.45 cents for the haul Billings to Omaha. Mr. Woodworth preferred to haul the lumber to St. Paul for 40 cents, because he received for the additional haul of 892 miles from Billings to St. Paul 13.45 cents more than he would have received had the lumber gone to Omaha.

Mr. Munroe, freight traffic manager of the Union Pacific, testified on this very point (Rec., 308):

> We always felt that the differential of 5 cents obtaining at the lower points above St. Paul was too low. We recognize that the

> conditions might be, and doubtless were, different at St. Paul and Minneapolis than from what they were at Omaha. I speak of Omaha as the typical point.

So that we have a complete unanimity of opinion between Mr. Woodworth, freight traffic manager of the Northern Pacific, and Mr. Munroe, freight traffic manager of the Union Pacific, in their opinion that there should be a differential as between St. Paul and Omaha.

All the witnesses, both before the commission and before the master, deprecated the making of rates upon any mileage basis, but it is not without some value in this case to have some representative mileages. The rate of 50 cents to Omaha, as applied by the commission, extends from Ashland on the Southern Pacific, through Portland, over the Oregon-Washington Ry. and Navigation Co., through Huntington, Oregon, over the Oregon Short Line to Granger, Wyoming, thence over the Union Pacific Granger to Omaha, a total short-line distance of 2,140 miles. Sumas, Washington, is perhaps the most representative long-distance point from which fir lumber is hauled on the 50-cent rate to Omaha by the northern lines, and this total distance over the Great Northern and Burlington is 2,098 miles, while over the Northern Pacific and the Burlington the distance is 1,942 miles. From Tacoma to St. Paul over the Great Northern and Northern Pacific, the distance is

1,855 miles and 1,907 miles, respectively. From all coast points to Duluth over the Great Northern, the distance is 70 miles less than to St. Paul; over the Northern Pacific 6 miles farther than to St. Paul. The short-line distance St. Paul to Seattle over the Great Northern is 1,814 miles, and over the Northern Pacific 1,911 miles. From these figures it seems patent that the distance of the maximum haul via the Union Pacific and its connections, and via the Northern lines and the Burlington to Omaha, is much greater than via the Northern lines to St. Paul or Duluth.

IN CONCLUSION.

In the bills of complaint the carriers charged a loss of $700,000 per year as the result of the commission's order. Although more than a year elapsed after the effective date of the order of the commission, not a particle of testimony was presented to show the earnings under the commission's order, or what effect that order had upon the revenues of the carriers. We do know that the commission gave the carriers an advance of five cents to St. Paul territory; that that was a free addition to the net revenues of these carriers.

Further, the carriers alleged in the bills of complaint that "it was possible with substantial accuracy to determine whether or not the transportation of lumber aforesaid may be conducted without loss under the rates so fixed by said orders," and yet

not a particle of testimony was offered from which it could be determined whether or not there was loss or profit under these rates.

Having stated their ability to make this showing, and having wholly failed to make such showing, it must be concluded that if the evidence which they possessed had tended to support their allegation, such evidence would have been presented.

The order of the commission expired one year ago. The rates prescribed by the commission remained in effect throughout the two-year period, and have to this good day remained the basis upon which the revenue of these Northern lines have been fixed. If the injustice which the master found was so palpable, if the discrimination against the Northern lines was so apparent it would seem that these carriers would long since have secured themselves by readjusting the St. Paul rate. All the contentions made in the court below as to these facts of the case must vanish when compared with their actions in maintaining the commission's rates for a year after the order expired.

The Great Northern and Northern Pacific and the Union Pacific lines for many years have earned munificent returns upon the capital invested in these properties.

In no manner did the commission, by its orders complained of in this case, violate any principle of fair dealing or transcend in any wise the provisions of the act to regulate commerce.

The decrees of the court below enjoining the orders of the commission should be reversed.

Respectfully submitted.

LUTHER M. WALTER,
Special Assistant to the Attorney General.
JESSE C. ADKINS,
Attorney.

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In the Supreme Court of the United States.

OCTOBER TERM, 1911.

THE INTERSTATE COMMERCE COMMISSION, appellant, *v.* UNION PACIFIC RAILROAD COMPANY ET AL.	No. 451.
THE INTERSTATE COMMERCE COMMISSION, appellant, *v.* NORTHERN PACIFIC RAILWAY COMPANY ET AL.	No. 452.
THE INTERSTATE COMMERCE COMMISSION, appellant, *v.* GREAT NORTHERN RAILWAY COMPANY ET AL.	No. 453.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

REPLY BRIEF FOR THE INTERSTATE COMMERCE COMMISSION.

We have just been handed a copy of the brief for appellees in these cases. We had not thought that this court would be concerned with any proposition save that on which the master and court below held

the commission's order unlawful. But there are certain propositions advanced in the brief which we consider it necessary to reply to. Their brief first sets forth the allegations of the bill and the answer. Appellees contend that the commission erred as a matter of law in holding that the continuance of the low rates from 1893 to November 1, 1907, raised the presumption that the higher rates, effective on and after November 1, 1907, were unjust and unreasonable. Further, appellees contend that these cases should be affirmed by this court because the commission decided the cases upon the doctrine of estoppel, which this court held vitiated the order made the basis of the opinion in this court in the case of *Southern Pacific Co.* v. *Interstate Commerce Commission* (219 U. S., 433).

While appellees admit (p. 25 of their brief) that the complaints before the commission "charged in definite language that the advanced rates were unreasonable and excessive," and also admit that certain language in the opinions of the commission, if segregated from the whole and read without reference to the substance of the complaints and the character of the evidence offered in support thereof, would tend to show that the commission concerned itself only with the reasonableness of the rates, in and of themselves, with regard to the service rendered; yet it is contended that the commission decided these cases simply and solely upon the equities due to the shippers without reference to the reasonableness of the rates.

That there may be no mistake we quote from the brief (p. 155), after referring to the decision of this court in the Willamette Valley case:

> We assert that the record here establishes with equal clearness that the exertion of the power in these cases by the commission gives rise to the unavoidable inference that the commission established these rates in precisely the same manner in which it established the rate to San Francisco.

Appellees set forth in their brief various paragraphs from the complaints before the commission but do not set forth the entire complaints. It therefore becomes necessary, for the information of this court, to print additional parts of the complaints, as well as pertinent parts of the answers of the defendants before the commission.

We shall not comment upon these pleadings further than to say that they show beyond all question that the case before the commission squarely presented the issue of the reasonableness of the rates complained of under section 1 of the act to regulate commerce.

We quote from the complaint in docket No. 1327, *Oregon & Washington Lumber Manufacturers' Association* v. *Union Pacific et al:*

XIX.

> That notwithstanding the movement of forest products from points in the State of Oregon and other Northwest States to points

in other States and Territories within the United States, as set forth in said new tariff, varies in volume over the different defendants' roads, that the traffic conditions also are different and the physical conditions on the several roads vary, yet in pursuance of the combination and conspiracy hereinabove alleged each and all of the above-mentioned roads, by said concert of action as hereinbefore set out, have advanced the rates in the same amount from the originating points to common points and places in other States and Territories within the United States, as set out in said tariffs.

XXII.

That said tariffs herein specified and in effect just prior to the first day of November, 1907, always have been and still are, more than fair, just, reasonable, and remunerative for the defendants and each of them, and that the traffic and earnings of each and all of said roads are, and have been for many years past, constantly increasing; that the defendants and each of them have from time to time materially and substantially increased their net revenue and profits and their net surplus under their tariffs formerly in effect, and at all times have been and still are earning large profits by means of said tariffs, so that no increase over the rates on lumber and forest products heretofore in effect is reasonable or should be permitted.

That said proposed advance in rates herein

specified and complained of is not made necessary by reason of any changed conditions affecting the transportation of forest products, or the service required in connection therewith, or by the financial condition of the defendants.

That said proposed rates discriminate against complainants and subject complainants and the various localities in which they conduct their business to undue and unreasonable prejudices and disadvantages and give undue and unreasonable preferences and advantages to persons other than complainants and those similarly situated and to localities other than those wherein complainants transact their business, all in violation of the provisions of the act entitled "An act to regulate commerce," approved February 4, 1887, and the acts amendatory thereof and supplemental thereto.

XXIII.

That the capital stock of each of the defendant companies grossly exceeds as to the public and as a basis for rates the actual value of the construction and equipment of said defendant railroads, and the value of all their property devoted to the public use, and that as to the public and as a basis for rates the bonded indebtedness of each of said defendants grossly exceeds the fair value of the property of defendants, and that it is unjust and unreasonable to impose this increase in rates as an additional burden to pay divi-

dends on said excessive stock, and principal and interest on said excessive bonds, and that upon the basis of value upon which defendants are entitled to earn a reasonable compensation the existing rates on forest products from the State of Oregon and the Pacific Northwest States are unreasonable and unjust, and that on a proper basis and on the basis on which the defendants are entitled to charge the rates formerly in effect were unjust, unlawful, and unreasonable. That by combining and confederating together with intent to create a monopoly and to oppress your petitioners, by express agreement or by implied understanding one with the other, the defendants have long maintained and do still maintain a schedule of charges calculated to return an unreasonably high profit upon the capital actually paid in and invested in the properties of said defendant companies, all of which matters and things your petitioners believe, and therefore aver, will fully appear if the said defendants be ordered to produce their books of account, papers, contracts, agreements, and other documents relating to said defendants' business for examination. And in support of the allegations set forth herein, the complainants hereby refer to, and make a part hereof, the classifications, schedules, and tariffs adopted and used by the defendants and their connections engaged in the transportation of forest products to and from the State of Oregon and the Pacific Northwest to other points mentioned in the foregoing

complaint, and the tariffs in effect immediately prior to November 1, 1907, together with the reports relating to the receipts and disbursements, capital account, the amount of operating expenses, fixed charges, and other expenses of defendants and dividends and other items paid, all of which said classifications, schedules, tariffs, and reports are on file in the office of this commission.

XXIV.

That complainants are unable at this time to state the exact amount in tonnage of forest products carried by all the various defendant roads, but allege the tonnage so carried was very heavy, has steadily increased for many years past, and that the carriage of said forest products by said defendants, and each of them, is highly profitable.

That lumber and forest products are a very low grade of traffic; this traffic is constant during the entire year; no special equipment is constructed or furnished for its carriage; it is loaded by the shipper and unloaded by the consignee, and where flat or open cars are furnished shippers are required, at considerable expense, to equip them so as to protect the lumber and train; it is not perishable, does not require rapidity of movement; there is small risk; in case of accident the damage is insignificant; said products are articles of general utility, and the rates thereon should therefore be relatively low.

To these various paragraphs of the complaint answers were filed, and for the Northern Pacific and Great Northern Railroads it was answered:

XXIV.

Defendant denies that under the superseded rates lumber traffic was very profitable, and alleges that said rates were unreasonably low and that said traffic did not bear its fair proportion of the cost of operating defendant's railroad and the return to which defendant was entitled upon its investment in its railroad property. Defendant denies that any special conditions exist with respect to transportation of lumber which entitle the shipper from points in Oregon or the Pacific Northwest to rates which are unreasonably low in view of the circumstances of the transportation.

XXVIII.

Further answering, this defendant alleges that the rates superseded by the tariffs complained of were established under conditions of transportation from the Pacific Northwest to eastern and southeastern points at a time when the conditions affecting the manufacturing and marketing of lumber and the transportation of the same were wholly different from those now existing, in that when said rates were so established the lumber industry in the Pacific Northwest was in its infancy and conditions were such that it was impossible for the manufacturers in that ter-

ritory to compete with the producers of lumber in Minnesota and Wisconsin and other points; that at the time said rates were so established the traffic of the transcontinental lines of railway was comparatively small, and the majority of the tonnage was west bound; that said rates were fixed at an abnormally low point and much below the rates previously enforced and for the purpose of enabling the carriers to secure traffic for east-bound shipment to balance in part the great excess of west-bound tonnage and for the purpose of developing the lumber industry and resources of the Pacific Northwest and enabling the lumber interests in that section of the country to increase their business and find a market in the Middle and Eastern States of the country; that by reason of that abnormally low rate the lumber manufacturers who are represented by the petitioners were enabled during the succeeding years to enormously increase their business and greatly extend the range of their markets, whereby, as a result of the abnormally low rate put in, as aforesaid, the Pacific coast lumber industry had grown to enormous proportions and has become of tremendous profit to those engaged in it. In the meantime the carriers engaged in the traffic have continued to transport the forest products in question at rates far less than compensatory; and this defendant alleges that in view of all the facts and circumstances stated it is but just and proper that the preceding low and uncompensatory rates should now be ad-

justed upon a reasonable and compensatory basis and that the advance in rates complained of is no more than proper under the circumstances; that the proposed advance in rates has not been made upon any idea or purpose on part of this defendant or other carriers interested in said rates of injuring or in any other way impairing the ability of lumber manufacturers involved to properly and profitably conduct their business, or with any idea or purpose of placing upon their traffic all or even approximately all that the traffic can bear, or for the purpose of in any way sharing in the profits of the lumber manufacturers in question, but solely for the purpose of avoiding an undue burden upon other forms of traffic and of reaching a proper relative adjustment of the rates on lumber and forest products to rates on other traffic, and bringing it about that the traffic in lumber and forest products shall bear a reasonable rate and return to this defendant and those other carriers engaged therein a just and reasonable return therefor.

The Union Pacific made answer:

XIX.

These defendants admit that the movement of forest products from points in the State of Oregon and other Northwest States to points in other States and Territories in the United States, as set forth in the new tariff, does vary in volume over the various roads and the traffic conditions and physical

conditions do vary on the various roads, but they deny that in pursuance of any combination or conspiracy, which they say does not exist, have the rates been made the same, but say that wherein said rates are coincident they are forced to be so by reason of the well-known fact that competition between roads necessarily forces rates between the same points over different lines of railroad serving them to the same level.

XXII.

These defendants deny that the tariffs in effect prior to November, 1907, were fair or just or remunerative, but declare that they were neither. They say that for a portion of the time defendants' net revenue increased, that at other times it has not increased, and that their surplus has not been increased from net revenue derived from such tariff nor are they earning large profits under the same; that the advances in rates is made necessary on account of changed conditions in increase in cost of operation and because the service is performed for inadequate compensation. These defendants deny that the rates discriminate against complainants or subject complainants or localities in which they conduct their business to unreasonable prejudice or that they are in violation of any act of Congress. These defendants say that so far as there has been any increase in revenue, in surplus, or in earnings the same has come from the carriage of other freights and from investments otherwise rightly made.

XXIII.

These defendants deny that the capital stock of the defendants grossly exceeds as to the public and as a basis for rates the actual value of the construction or equipment of said railroads and deny that the bonded indebtedness added to the capital stock makes such excess, but say on the contrary that the correct amount of bonds and capital stock is far less than the true value of the road or the amount it would take to reconstruct the same. They say that in accordance with such true value if it were used as a basis for determining rates it would be entitled to charge rates in excess of what they are. They further say that irrespective of any such question the value of the service performed for complainants is more than the rates charged. These defendants deny any combination or confederation to create a monopoly or to oppress complainants or others similarly situated by express agreement or implied understanding and further deny that they have at any time maintained a schedule of rates producing high profits.

XXIV.

These defendants deny that the carriage of forest products has been highly profitable to defendants. They deny that forest products are a very low grade of traffic, say they are not the highest grade of traffic nor are they very low, but rather intermediate in char-

acter. It is not true that the shipment of forest products is constant during the entire year. It is true that there is more or less shipment of forest products at all times of the year but the shipment varies, at times being much greater than at other times. It is true that the shipments are loaded and unloaded by shipper and consignee and that where loaded on flat or open cars where stakes are required that such stakes are ordinarily furnished by the shipper, but they say that an allowance is given in weight covering this and furthermore the furnishing of such stakes is no different from what is done and has been long established by custom in various other kinds of shipments where the shipper fastens the goods in place on flat cars; furthermore, this custom being as aforesaid long existent the rates have been made with regard to it and are maintained with regard to it in the new schedule.

In the so-called *Washington case* counsel sets forth from the complaint paragraphs V and VI, but omits VII and VIII; he then copies paragraph IX. The paragraphs omitted are, in view of the position which counsel now assumes, very material. We here set forth paragraphs VII and VIII (*Pacific Coast Lumber Association* v. *Northern Pacific Railroad Co.*):

VII.

Not only were the last existing rates as great as the traffic could bear, and greater than a large part of the product would bear,

but under those rates the defendant carriers have greatly prospered. Petitioners are advised by their counsel and submit that common carriers may not demand from the public more than reasonable compensation for the service rendered, and in no case may they exact more than the customers can afford to pay and permit a free movement of the traffic. Petitioners charge that the previous rates on lumber yielded the defendants, and each of them, full compensation for the service rendered in the transportation of lumber. Lumber and forest products constituted in the year 1906, 17.33 per cent of the entire tonnage of the defendant Great Northern Railway Co., and 38.82 per cent of the tonnage of the defendant Northern Pacific Railway Co. In the year 1900 the tonnage of forest products over the Great Northern Railway Co. was 1,079,155 tons, out of a total tonnage from all traffic of 5,162,757; and in the year 1906 the tonnage of forest products was 2,789,306, out of a total tonnage of 16,123,540 tons; the tonnage of forest products of the Northern Pacific Railway Co. in 1900 was 2,217,526 tons, out of a total tonnage of 7,121,655; and in 1906 the tonnage of forest products was 5,961,617, out of a total tonnage from all traffic of 15,356,312 tons. Petitioners charge that the tonnage over the Chicago, Burlington & Quincy Railroad and over the Harriman lines and the lines of the other defendants will show a similarly large proportion to the entire tonnage of all traffic.

The gross earnings of the Great Northern increased from $22,019,052.66 in 1900 to $46,494,226.57 in 1906; the net earnings from operation increased from $10,370,620.47 in 1900 to $23,361,143.46 in 1906; the surplus for the year 1900 was $2,217,763.74, while that for the year 1906 was $5,184,569.31; the surplus revenue or net surplus (which includes the accumulated surplus as well as that for the year) was, in 1900, $2,684,240.76, and in the year 1906, $23,593,165.81; the total tonnage increased from 5,162,757 tons in 1900 to 16,123,540 tons in 1906, while the operating ratio of expenses to earnings actually decreased from 52.90 per cent to 49.77 per cent; the net earnings per mile increased from $2,538.65 in 1900 to $4,507.26 in 1906; and in the year 1906 the Great Northern earned and paid a dividend of 7 per cent, or $9,148,521, on its stock, as against $6,408,777.72 paid in 1900. The gross earnings of the Northern Pacific Railway Co. increased from $30,001,036.67 in 1900 to $61,132,655.47 in 1906; the net earnings from operation increased from $15,626,689.41 in 1900 to $30,103,043.37 in 1906; the annual surplus increased from $1,083,818.76 in 1900 to $5,542,519.69 in 1906, while the accumulated surplus revenue increased from $2,504,804.85 in 1900 to $19,936,979.40 in 1906; the net earnings per mile increased from $3,314.82 in 1900 to $5,573.46 in 1906; the tonnage increased from 7,121,655 in 1900 to 15,356,312 tons in 1906; the operating ratio increased only from 47.90 per cent in 1900 to 50.75 per cent in 1906.

The dividends paid in 1906 amounted to $10,850,000, or 7 per cent, as against $5,400,000 paid in 1900.

The Chicago, Burlington & Quincy shows gross earnings of $73,413,385.88 in 1906, as compared with $47,535,420 in 1900, and net earnings of $22,758,224.45, as compared with $17,718,582; its surplus for the year 1906 was $3,907,572.30; its ratio of operating expenses increased from 62.73 per cent in 1900 to 69.41 per cent in 1906; in 1900 it paid a dividend of 5 per cent, while in 1907 it paid a regular dividend of 8 per cent and a special dividend of 6 per cent, or a total dividend of 14 per cent.

The Harriman lines increased their gross earnings from $46,639,629 in 1902 to $66,879,142 in 1906; net earnings from operations increased from $23,359,927 in 1902 to $32,055,066 in 1906; the annual surplus in 1906 was $8,032,249.66, and the accumulated surplus was $16,457,583; the gross earnings per mile increased from $8,166.76 in 1902 to $12,376.89 in 1906, and the net earnings per mile increased from $4,090.40 to $5,932.22; during the same period the tonnage increased from 8,590,193 tons to 13,048,346 tons, and the operating ratio increased from 50.92 to 52.07. In 1902 these lines paid in dividends 4 per cent on preferred and 5½ on common stock, and in 1906 the preferred stock received 4 per cent and the common stock 8 per cent.

In addition to operating expenses and dividends paid by the several defendants,

each of them paid fixed charges, including a large amount of interest on bonds and funded debts; and under the cover of operating expenses, petitioners charge that large amounts were expended for permanent betterments and improvements.

Petitioners further aver upon information and belief that the tonnage of forest products constitutes 17.33 per cent of the entire tonnage and pays 27.80 per cent of the entire gross earnings of the Great Northern Railway Co., estimated to yield $13,946,530 gross freight revenue, and constituted 38.82 per cent of the entire tonnage and 48.75 per cent of the gross earnings of the Northern Pacific Railway Co., paying a gross revenue estimated at $29,808,060. Petitioners charge that the gross revenue derived by the Northern Pacific Railway from its tonnage of forest products exceeds by several million dollars the entire operating expenses of the railway company attributable to its freight business, so that the revenue derived from all other freight traffic may be classified as net earnings from operation; and petitioners submit that a low-grade commodity which bears such a burden and contributes so substantially to gross and net earnings is highly profitable to the carrier.

VIII.

Petitioners submit that lumber and forest products are entitled to as low a rate as will permit the traffic to move freely and as will afford fair compensation to the carriers for

> the service rendered; that under the superseded rates the traffic was very profitable to the carrier; that the tonnage is large and would be larger if the carriers would furnish the cars required, which they have failed and refused to do; that the movement is constant and regular, not depending upon seasons; that rapidity of movement is not required; that no special equipment is required; that the movement between interstate points is almost wholly in carload lots, which are loaded and partially equipped by the shipper and unloaded by the consignee, without expense to the carriers; that the risk of loss or damage in transit is so slight as to be negligible; that lumber is an article of prime utility required to be transported long distances; that it is of large bulk and weight as compared to value; and that even under the last existing rates the cost of transportation to consuming markets in other States exceeded the value of the lumber at the mills.

In the answers, which were generally the same, material denials and allegations were made, and upon the point presented by counsel for the appellees we quote from the Northern Pacific Co.'s answer:

> VI.
>
> Defendant denies that a large part of the investment in the lumber industry was made on the faith that the freight rate on lumber would not be increased. Defendant is not informed as to whether freight rates on the

average of all traffic in the United States have decreased 20 per cent or at all, within the past 20 years, and is not informed as to the extent of the decrease in freight rates on transcontinental traffic during that period. Defendant admits that its earnings per ton per mile in the year 1906 were less than similar earnings in the year 1900, but alleges that such decrease was largely the result of causes other than the decrease in freight rates. Defendant admits that the last existing rates on lumber from points within to points without the State of Washington were voluntarily established by it in connection with other carriers, but denies that petitioners were entitled to presume that such rates would not be advanced. Defendant admits that the previous rates to St. Paul, Omaha, and Denver are correctly stated in paragraph six of the petition, except that it denies that rates on spruce and hemlock have been long maintained, but alleges that until recently such commodity took the same rates as the rates on cedar products. Defendant alleges that any difficulty which the lumber manufacturers of Washington experienced in competing with other manufacturers was due solely to the fact that such other manufacturers were more favorably situated with reference to the markets, and no manufacturer enjoyed as favorable a freight rate, in view of all the circumstances attending the transportation, as that enjoyed by the manufacturers of the Pacific Northwest. Defendant is not in-

formed as to the extent of waste committed by the manufacturers of Washington in the destruction of the lower grades of lumber to enable them to carry on an artificial competition with manufacturers more favorably situated with reference to the markets.

VII.

Defendant denies that the last existing rates were or are as great as the lumber traffic could bear, and denies that the present rates complained of were based upon the ability of the shippers of such traffic to pay the same; and defendant denies that any prosperity which the carriers enjoyed has been the result of the said rates, but such prosperity has been the result of the earnings from other traffic. Defendant admits that common carriers may not demand for service rendered more than reasonable compensation, but alleges that the previous rates constitute less than reasonable compensation for the service rendered and the rates complained of no more than such reasonable compensation. Defendant is not informed as to the percentage which the movement of lumber and forest products over the lines of the defendant Great Northern Railway Co. bore to the entire tonnage of said company in the years mentioned in the petition, or as to the amount of the total tonnage or the tonnage of forest products over said lines. Defendant admits that the percentage of the movement of lumber and forest products

over its line is stated with substantial correctness in the petition, and it alleges that the figures set forth in the petition comprise large quantities of lumber originating at other points than the Pacific Northwest. Defendant is not informed as to the earnings, gross or net, or surplus, or earnings per mile, or operating ratio of the Chicago, Burlington & Quincy Railroad Co., or of the the so-called Harriman lines, for the years mentioned in the petition, nor with respect to the dividends of said companies. This defendant admits that its gross earnings increased from the year 1900 to 1906 in substantially the amounts named in the petition, and that its net earnings during the same period and its earnings per mile increased in substantially the amounts stated in the petition; but this defendant begs leave to refer to its reports to this commission for the years in question, which show the exact amounts of such items. This defendant admits that in addition to operating expenses and dividends paid by it it paid fixed charges, including the interest on bonds and funded debts, but denies that under cover of operating expenses it charged large or any amounts for permanent betterments or improvements. Defendant admits that the tonnage of forest products transported by it constituted 38.82 per cent in the year 1906 of its total tonnage, but alleges that a large proportion thereof was lumber tonnage originating at points other than in the State of Washington, and denies that the revenue

received from such lumber tonnage constituted 48.75 per cent of defendant's gross earnings, or paid a revenue equal or approximating $29,808,060, and alleges that the revenue derived from that source was much less than the sum last mentioned. Defendant denies that the revenue derived from its tonnage of forest products exceeds the operating expenses of its railway.

VIII.

Defendant denies that under the superseded rates lumber traffic was very profitable and alleges that said rates were unreasonably low and that said traffic did not bear its fair proportion of the cost of operating defendant's railroad and of the return to which the defendant was entitled upon its investment in its railroad property. Defendant denies that any special conditions exist with respect to the transportation of lumber which entitle the shipper from points in Washington or Pacific Northwest to rates that are unreasonably low in view of the circumstances of the transportation.

Complainants further set forth excerpts from the southwest Washington complaint, docket No. 1335, but, likewise, wholly fail to show the allegations as to the unreasonableness of the rates.

It is sufficient here to state that the complaint is also verbatim with the allegations which we have copied herein (docket No. 1327).

We will not encumber this brief by again repeating what is in the first complaint.

The commission's opinion is set forth as exhibits to the answers of the commission in volume A, 451, at page 44; No. 452, page 43; and No. 453, page 45.

We need not in this brief set forth any copious extracts from the report of the commission. An examination of the commission's report and opinion in each of these cases shows indubitably that the commission considered and decided these cases on the justness or reasonableness of the rates in controversy.

As to the matter of the presumption arising by virtue of the long continuance of the rates, the commission said (Op. 1327, Rec., 55):

> The Supreme Court of the United States has said, in *Interstate Commerce Commission* v. *Chicago Great Western Railway Co.* (209 U. S., 108), that an increase of rates by a carrier raises no presumption of wrong. It seems, however, that when certain rates have been in force for a long period of time and business conditions have become well settled thereon and the carrier is earning a liberal income and paying liberal dividends while expending large sums in improvements and renewals, a material increase in these rates unaccompanied by a corresponding decrease in other rates places upon the carrier the obligation of justifying the increase.

The carriers acted upon this doctrine before the commission, and undertook to justify the advance of the rates in question. The utmost criticism which the carriers made of the commission's judgment on

this matter is perhaps in their remark (p. 53 of their brief) while discussing the empty-car movement:

> The shipment eastward of other forms of traffic has had little to do with the change in the empty-car movement; and it may be stated here that the remarks of the Commission in its opinions in the coast cases on that subject, are not borne out by the exhibits in evidence and the testimony of the witnesses who are familiar with the facts.

One of the things complained of in brief for appellees is that the commission took evidence of witnesses for the railways and considered it for what it might mean without limiting such consideration to the purpose for which the carriers intended it. For example, page 99 of that brief says:

> The commission discussed Hinckley Exhibit 3, which is a table necessarily by approximation, of the *comparative* cost per loaded freight car mile, arrived at by dividing total operating expenses and taxes by mileage of loaded freight cars on the different lines in question. This exhibit was not offered as a basis for determining actual cost because, obviously, it was open to many objections if so offered, but as stated, it was offered as a basis of *relative* cost, computed for each line upon the same basis and therefore offered a comparison of some value, and consequently a means of comparing the rates in question with the yellow pine rates approved by the Commission.

> The opinion of the Commission in the Oregon case, however, seems to have taken this exhibit, as well as others, as offered for the purpose of showing actual cost. It proceeds to deal with this and other exhibits with the same mistaken idea, producing results of no apparent value to the question of the reasonableness of these rates; indeed, the Commission did not deem the results so drawn as of any value and properly said: "These calculations show how easy it is to play with figures and make them prove almost any desired result."

When counsel say in their bills of complaint and in their brief and argument here that there was *no evidence* showing or tending to show that the rates of November 1, 1907, were unjust or unreasonable, all that is intended to be said is that, in the judgment or opinion of counsel for appellees, there is no such evidence. In other words, counsels' complaint against the commission is that, upon the evidence, it believed, or in its opinion it seemed, that the rates complained of were unjust or unreasonable. So it is not quite fair to say that there was no evidence, when the only point in dispute is as to the weight of the evidence.

Finally, for the purposes of this brief, we shall conclude simply with a statement of the differences between the record in this case and the record in the so-called Willamette Valley case, wherein the doctrine of estoppel as applied by the commission vitiated its order. We have already seen that at the

same time the commission was investigating the rates complained of in its dockets Nos. 1327, 1329, 1335, and 1348, it was also examining into lumber rates in dockets Nos. 1054 and 1331, all of which dealt with rates upon fir lumber, cedar, shingles, etc. We might also add that only a short time previously it had passed upon an advance in the Tift and Central Yellow Pine cases, and the opinion in these latter two cases of the commission was approved by this court upon appeal. Counsel, in 1327, before the commission, requested that all that was in these various lumber cases, excepting the Tift and Central Yellow Pine cases, should be considered by the commission. To this there was no objection. But in none of these cases now here being argued was there any contention that the carriers had promised, or were under any moral obligation to maintain, the then existing rates.

No such contention was made in these cases before the master or the Circuit Court. It is only since this court held unlawful an order in 1331 that that proposition has been seriously advanced. This court said, as a basis for holding unlawful the rates prescribed from the Willamette Valley to San Francisco, that the commission had decided the case wholly apart from any question of the reasonableness of the rate, and upon the sole ground that the commission believed "it had the right under the law to protect the lumber interests of the Willamette Valley from the consequences which it was deemed would arise from a change of the rate, even

if that change was from an unreasonably low rate which had prevailed for some time to a just and reasonable charge for the service rendered for the future." (219 U. S., 449.)

This court cited the admission of counsel before the commission that he did not claim that the rate was unreasonable in and of itself. No such a condition of record appears in this case. On the contrary, both shippers and carriers offered abundant testimony dealing with the reasonableness of the rates, both in and of themselves, and in comparison with other rates.

We quote from the opinion of this court in that case:

> In the argument at bar the railroad companies do not question that if a complaint is made to the Interstate Commerce Commission concerning the unreasonableness of a rate that it has the authority to examine the subject, and if it finds the rate complained of is in and of itself unreasonable, having regard to the service rendered, to order the desisting from charging such rate, and to fix a new and reasonable rate, to be operative for a period of two years. The companies further do not deny that where the Commission exercises such authority, its finding is not subject to be reviewed by the courts. (*Interstate Commerce Commission* v. *Illinois Central Railroad Co.*, 215 U. S., 452.)
>
> In other words, the argument in behalf of the railroads fully concedes that an order of the Commission is not open to an attack in

the courts so long as that body has kept within the powers conferred by the statute.

This court will search the records of this case in vain to find a parallel situation to that which was condemned in the Willamette Valley case.

Respectfully submitted.

LUTHER M. WALTER,
Special Assistant to the Attorney General.
JESSE C. ADKINS,
Attorney.

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